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Carl E. Prince
and
Mollie Keller

The U.S. Customs Service

A Bicentennial History



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PREFACE

When we began the research for this book, the sources appeared daunting: the customs records in the National Archives alone measured 8,000 linear feet. There are more customs records among the Treasury Department's papers and other collections. Thousands more linear feet are located at the regional federal records centers across the United States. Every major research library houses collections rich in customs history as well, and innumerable historians for nearly 200 years have written about the Customs Service or touched on it in their extended studies.

Knowing that we could not possibly exhaust existing primary sources in one year of research (or 20), we chose a policy of sampling the richest primary sources, many of them obscure and little used because they lie buried amid poorly catalogued or uncatalogued collections. We hoped by this means to provide a small path for others to follow; customs records, like the Customs Service itself, are rich not only in American economic and political history, but social and cultural history as well. This study is intended to reflect that variety.

We also realized that a one-volume study could at best provide only a superficial chronicling of Customs' myriad involvement in the nation's history, so we chose to discuss in some depth representative topics—pressure points like the American Revolution, the embargo era, the nullification controversy, the Civil War, Prohibition, and drug enforcement. Rather than survey complex customs oversight of immigration in the 19th century, we opted to deal with the enforcement of the Chinese Exclusion Act of 1882 as an example in depth.

It is axiomatic that the function of the Customs Service from

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its inception has been to defend the revenue of the nation. It has achieved that task as well as circumstances have allowed. Until the overworked Jacksonian era there was little corruption and a high degree of professionalism; that pride was egregiously assaulted from outside for the next three-quarters of a century. About 1900, civil service reform finally took hold, and the Customs Service thereafter returned to its professional origins. It has successfully met its obligation to “protect, secure, and defend the revenue” since then. From its establishment, the Customs Service has also been asked to do more than enforce tariff regulations and collect duties. It was the nation’s first public health service, its first immigration service, and its first coast guard.

Customs was also from its earliest moments a public agency exploited by the American political party system. Opened up by successive administrations to party patronage, the Customs Service remained thoroughly politicized for over a century. That it was able to retain its professionalism stands as a remarkable tribute to dedicated individuals who either fought the system from within, or more usually, manipulated it subtly to maximize honest achievement of the service’s mission. And it did so even as it was handed the dirtiest jobs. Customs, as noted earlier, was at the forefront of official presence before the American Revolution, and thus bore the brunt of popular American disfavor. During the embargo and nullification crises, Presidents Jefferson and Jackson asked the Customs Service to enforce badly drawn revenue laws. Customs was virtually the only government screening agency during the 19th-century years of massive immigration, always with grossly inadequate resources. It was asked to enforce morality during Prohibition. Now it holds a significant share of the responsibility for preventing drug trafficking, as usual without adequate resources.

Throughout America’s history, therefore, the Customs Service has remained close to the center of the action. Few will dispute its claim, as the most enduring government agency, that it has always tried to do the best it could with what it had, and

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for the most part successfully, bad laws, bad politics, and public friction notwithstanding.

* * *

It is a pleasure to thank the large number of professionals in the Customs Service who went out of their way to make our efforts easier. They all share a deep awareness of Customs' rich history, which they translated into commitment to this study.

This group includes Michael Lane, Deputy Commissioner; D. Lynn Gordon, Assistant Commissioner for Commercial Operations; Stephen A. Dougherty, Executive Assistant to the Commissioner; William F. Riley, Comptroller; Theodore Kasna and Linda Angellata in the Contracts office; Mieko Kosobayashi, former Secretary to the Commissioner; and Ernest Chamber, the Conservator of Customs. Many members of the library and executive staffs and several regional commissioners were also helpful.

Patricia Coss, Editor of *Customs Today*, saw this volume through press, adeptly adhering to the publication schedule, managing proofs, and selecting illustrations. She was both efficient and cheerful throughout a complex process.

A special thank you to Stuart Seidel, the Customs Historian and the Director of the Regulatory Procedures and Penalties Division, whose study of Customs during World War I we drew on so heavily. Always an astute observer of the Customs Service, we prevailed on him to write the Epilogue to this volume.

Michael N. Ingrisano, Jr., the Director of the Information Services Division, has been involved in this history from its inception. He knows more about the agency's past than any other person we know, and he freely allowed the authors to tap that knowledge repeatedly. Ingrisano read every chapter in draft and saved us from any number of errors. We depended as well on his own published studies of specialized aspects of customs history, as well as his fine *Biographical Directory* of the Customs Service. His sense of humor and warmth made it a pleasure to work with him.

We first came to know Commissioner William von Raab

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when he came to New York University as Vice President in the early 1970's. The Commissioner has an abiding passion for history, and he saw well in advance of the Customs Service's bicentennial anniversary that time would be required to produce a deep history of Customs. His foresight and interest in the project made it possible.

Many historians and archivists in the National Archives and the regional Federal Records Centers have helped us in our research. In particular we want to acknowledge the support of Frank Burke, now of the University of Maryland and formerly the Acting Archivist of the United States. We also want to single out for mention Kathleen O'Connor, Staff Archivist at the Federal Records Center at San Bruno, California, who spent hours digging out obscure collections touching on the enforcement of the Chinese Exclusion Act of 1882.

Several colleagues at New York University have facilitated our efforts. Chancellor L. Jay Oliva helped to secure the grant that underwrote this study. Dean of Administration Ann Burton helped establish the project in the College of Arts and Sciences. Lisa Tate and Martha Dunne administered the grant through the university's Office of Sponsored Programs. Lynn Anderson edited portions of the first seven chapters. Claire Potter coped valiantly with the typing of the manuscript and its often complex footnotes. Ken Silverman in the English Department helped identify cultural figures in the Customs Service and critically reviewed that portion of chapter four dealing with Nathaniel Hawthorne.

NEW YORK UNIVERSITY

Carl E. Prince
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INTRODUCTION

By William von Raab
Commissioner of Customs

Few Americans realize that British customs practices drove the colonists into the American Revolution. Ironically, however, the powder that destroyed English rule soon became the fuel that launched a new country.

Prior to the French and Indian War, Great Britain and its colonies were unified, and the colonies were dependent upon their motherland. Trouble began after the war, however, when Parliament realized that revenue was needed to cover its war debts. Soon thereafter, the seeds for the birth of our nation were sown at the Stamp Act Congress in 1765. The English then blundered by responding with the Townshend and Coercive Acts. Customs duties thus became the catalyst that set in motion the events that destroyed English rule in the colonies.

Customs officers have been actors in some of the most important events of early American history. The development of Customs has not only been a major factor in shaping our nation, but in many ways the story of U.S. Customs is an accurate reflection of the development of our nation and its history.

In New York in April 1789, immediately after the first House of Representatives had been sworn in, James Madison of Virginia rose from his seat to introduce:

. . . a subject that requires our first attention and united exertions. The deficiency in our Treasury has been too notorious to make it necessary for me to

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animadvert upon that subject. Let us content ourselves with endeavoring to remedy the evil. To do this, a national revenue must be obtained, but the system must be a one that, while it secures the object of revenue, it shall not be oppressive to our constituents. Happy it is for us that such a system is within our power; for I apprehend that both these objects may be obtained from an impost on articles imported into the United States.

By Madison's wisdom and tenacity, the Customs Service was created, then signed into existence by President Washington on July 31, 1789. Those very customs duties which had caused the rift between Great Britain and its colonies now served as the foundation for the new nation.

Born out of our new nation's need for revenue, the U.S. Customs Service diligently pursued its collection duties and secured the funds necessary to keep the infant ship of state afloat. Soon our responsibilities would go far beyond revenue. Indeed, in the early years, Customs officers were the eyes, ears and arms of the federal government. This position came by default to the first fully formed national agency, often the solitary federal presence in the burgeoning ports of the young country. In the first decades of America's lively democratic experiment, Customs officers were, in effect, its field scientists. By trial and error, they tested the federal programs designed to forge a strong union from the slowly coalescing states.

In fact, this young nation might not have survived many critical periods, might not have prospered so readily, without the work of the U.S. Customs Service. For not only was Customs virtually the sole source of federal revenue in the nation's formative years—by the mid-1800's accounting for nearly 95 percent of all receipts—but it was the Customs Service that built America's lighthouses, directed its revenue cutters, standardized its weights and measures, paid its veterans salaries, managed its marine hospitals, and single-handedly controlled the flow of

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people and products through its ports. Put simply, Customs helped shape the life of young America.

Although much has changed since those early days, Customs has remained one of the linchpins of our national security and economy. International trade and travel have reached heights inconceivable a century ago. Keeping pace with the complexity of modern America has presented the Customs Service with challenges our founders could never have foreseen. Events in our nation's development have molded Customs and Customs, in turn, has helped shape those events.

Commercial fraud, pornography, drug smuggling are not peculiar to our own age—they are the dark side of America and all men, stretching back generations. It is once again the Customs Service which the nation has called to help quell these destructive forces. We will respond with the same alacrity and dedication that was and continues to be the character of Customs—standing ready to serve the nation, ready to accept any challenge, in time of peace or in time of war, to protect America's independence.

We of the Customs Service are proud of our two centuries of service to America. In commissioning this book, I hoped to make available to all Americans a work which would enable them to understand and appreciate the significant role Customs has played in our nation's history. More important, however, is to give credit to all the men and women of the U.S. Customs Service for their contributions and sacrifices as individuals and as members of a superb organization that has played a critical role in protecting our independence for 200 years.

FOREWORD

by Sir Angus Fraser, K.C.B., T.D.
Chairman of the Board of H.M. Customs & Excise
1983-1987

Any commissioner of the British Board of Customs & Excise is bound to take a particular interest in the history of the U.S. Customs Service and to feel a special bond with its present-day practitioners. Our two services have an eventful and sometimes overlapping past. In the case of Her Majesty's Customs & Excise, the chronicle extends from the Dark Ages to the age of the computer and, along that line of evolution, takes in very directly the early history of Customs in the Americas. There are even some who contend that the name America itself was derived, in gratitude, from the name of Customs Collector Richard A'Meryke, who paid a subsidy out of the Bristol Customs duties to John Cabot when he was setting out on the voyage that led to the discovery of the American mainland.

Today, when the British Commissioners of Customs & Excise meet in their boardroom, their deliberations are still illuminated by the image of Charles II, in the form of a 17th-century stained-glass portrait. The modern history of both the Customs and the Excise in England starts with him; for he it was who placed revenues firmly under the control of his own commissioners, appointed by royal letters patent (a constitutional practice that survives to the present day). It was also in Charles' reign that a British act of Parliament imposed the first plantation duties on goods shipped within America. From Britain came a group of collectors, comptrollers, and surveyors, forming a service that was, in essence, very much the

same as the one operating in England under the recently appointed commissioners.

The officers in America were designated under Treasury warrants and formed a common establishment with the British customs. Gradually, however, the service became more specifically American. In 1683 the first surveyor general was appointed for the American colonies; and, under their delegated powers, the surveyors general added to customs numbers by employing "port waiters" and "riding officers," often locally engaged. Nonetheless, the seat of power was still very much in England. Colonial merchants who wanted to make representations on revenue matters had perforce to address themselves to London, where a commissioner sat on the bench in the Long Room of the Custom House every day to hear complaints and petitions.

If complaints from across the Atlantic often fell on deaf ears, the modern administrator can feel no surprise, given the predictable consequences of such practices as splitting the value of seizures three ways, among Crown, governor, and customs officer, backed up by extensive powers of search and enforcement. Eventually the problem of controlling the American colonies, much expanded by the new territories that passed to Britain after the wars in Canada, proved almost impossible for the plantation department in London. The Board of Customs, like the Board of Excise, was already finding that it could scarcely cope with the legitimate side of its business in Britain, let alone the vast illicit smuggling trade that flourished, violently and bloodily, with the connivance of all walks of English society.

I imagine that the commissioners were glad to lend their support to the experiment in colonial administration which, in 1767, established a resident American Board of Customs in Boston, Massachusetts, with powers comparable to those of the English Board. Administratively, such decentralization had a good deal to be said for it, in terms of assuring justice both to merchants and to customs officers. That consideration weighed little with disaffected colonists, who saw only too clearly that the primary object was to secure more effectively the imposts, old

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and new, that they were expected to pay. What was at stake transcended taxation and had become the fundamental issue of whether the undoubted legislative sovereignty of the British Parliament also extended to its colonies.

The American Board of Customs was ill-starred and short-lived. Its prospect of survival had hardly been strengthened by the inclusion of the New England-born Charles Paxton among the commissioners and the fateful decision to locate the headquarters in fractious Boston, rather than Philadelphia (as originally contemplated by the British commissioners) or New York, a decision that swiftly led to the introduction of troops and armed vessels into Boston to sustain Crown authority. Paxton had aroused monumental unpopularity in the old service when, as "Surveyor and Searcher for the Port of Boston," he had specialized in seizing items of illicit trade to the substantial benefit of his own pocket. On the formation of the American Board, the friendly connection that he had cultivated with Charles Townshend, the British Chancellor of the Exchequer, won him a spectacular promotion, equivalent to a single leap from major to major general. He was no more popular as a commissioner, and on one occasion he narrowly escaped tarring and feathering by taking to the back streets of Boston dressed in female clothing.

The commissioners fled the country for good in 1776, although their patent was not revoked until 1783, when the ports remaining in the British colonies after the Revolution reverted to the jurisdiction of the customhouse in London. One of the express objectives in setting up an American board had been to conciliate the American public. In that, the Board's failure was conspicuous: indeed it had served to provide one of the precipitating causes of the Revolution.

The history of the U.S. Customs starts, then, with an obituary notice of prerogative. From that point on, in Britain as in the United States, those persons who were once known as the King's "customers" have gradually become the servants of the Nation. Formerly the bugbear of the public, the revenue official

becomes in the end the public's provider and protector, seeking to collect the national dues with as little trouble to the payers as possible and to protect society against some of the scourges—drugs among others—that plague the modern world. In pursuing these common tasks, the British Customs have long benefited from a fruitful collaboration with the U.S. Customs Service and in so doing have formed a deep respect for the latter's dedication and professionalism.

Ours is a continuing story. Over the years, every part of our two services has had to respond to constantly changing demands. Through all the changes, however, the essentials remain, and this bicentennial publication affords a welcome opportunity to look at the welter of influences that have come together to fashion one of the great American departments of state.

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Chapter I

CUSTOMS AND THE COMING OF THE AMERICAN REVOLUTION, 1763–1776

The year 1767 is the real date of the establishment of the Customs Service in this country. The Townshend Acts of that year included a little noticed provision creating an American Board of Customs Commissioners to be assigned to Boston and charged with enforcing the harsh new regulations incorporated in the acts. Coming hard on the repeal of the detested Stamp Act, the Townshend duties exacerbated the tensions already evident in the colonies. The new commissioners could hardly be said to be welcome in Boston; in fact, the Board was doomed to failure even before it arrived in America.

From the British point of view the Townshend Acts, incorporating both new duties and a new try at enforcing old ones, proved to be a disaster. The institution of a highly visible American Board of Customs turned out to be a major imperial provocation. The appearance of the King's broad arrow on seized goods was to colonial merchants and waterfront laborers what the proverbial red flag is to the bull. As we shall see, the new customs establishment resulted in escalating confrontation between colonies and mother country; eventually, the customs conflict emerged as a cause of the American Revolution. Before turning to that story, however, it is important to examine briefly the British customs establishment in colonial America before 1767.

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THE ENGLISH CUSTOMS SERVICE AND THE AMERICAN COLONIES

Throughout the American colonial era, jurisdictional disputes within the English bureaucracy made effective control of customs in the American plantations, as the colonies were called, virtually impossible. The problem of control was aggravated by the pervasive and casual corruption that was the way of doing customs business in England. The relationships among different elements of the British Treasury is complex and not really relevant here; suffice it to say that these relationships often dated back to medieval times and had become anachronistic in the wake of the development of a far-flung British empire. The British customs system was caught up in the bureaucracy, the corruption, and the inadequacy evident everywhere in the administration of British government.

The British customs service was administered by an English Board of Customs Commissioners, supposedly working closely with the Board of Trade at Whitehall, the center of government in London. That close relationship was honored more in the breach than in the observance. The two boards rarely met together to align policies, interacting instead through their respective secretaries. At a time of rapid colonial growth, this lack of communication proved fatal to effective control over American colonial trade. No single government agency really oversaw that burgeoning commerce. This led to a prolonged period of what historians refer to as "salutary neglect," an absence of regulation that allowed American economic growth to occur virtually unimpeded during the 17th and 18th centuries. There was an English customs cadre in America, but it was so distant from London that its authority was seriously impaired.¹

In 1710 there were 37 customs officers in 11 North American colonies. That number had grown to only 50 by 1760, a

¹ For a thorough treatment of the origins and early history of the English customs service, including the problems caused by the expanding empire in America, see Elizabeth E. Hoon, *The Organization of the English Customs System, 1696-1786* (Newton Abbot, England: 1968).

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half-century later, on the eve of the massive increase in tensions that would lead to the Revolution. Those 50 customs men had to enforce English laws throughout an area stretching southward from the Maine plantations to Georgia, and inland from the Atlantic to the mountain barriers of the Appalachians in the north and the Blue Ridge in the south. Obviously, customs enforcement was virtually impossible without a whole army of “tidewaiters” (literally, those who waited for the tides bringing ships to port. “Tidesman” was another colloquialism interchangeable with tidewaiter.) Since they were not at hand, the colonies were very much on their own. No wonder Americans resented enforcement attempts after 1760. They had spent a century and a half functioning with almost no trade regulation, the Navigation Acts on the books since 1651 notwithstanding.

Whitehall had a point as well. It infuriated the British that the Americans would trade with the enemy on any pretext, whether that enemy be Spanish, French, or Dutch. As there were only six years of peace between 1739 and 1763, the problem from the British point of view was hardly theoretical. For example, colonial ships would clear customs in Boston or New York with a solitary French prisoner aboard—a prisoner whose presence served as an excuse for a voyage to the West Indies for an exchange of prisoners and the exchange of a sloop full of goods as well. The Americans would then return with one English soldier or sailor, as well as a cargo of valuable sugar, spices, wine, or molasses for rum-making which could easily be dropped in some inlet or harbor where customs supervision was nonexistent.

The ineffectiveness of customs regulation rankled in London. This was one reason why, at the end of the Seven Years’ War with France in 1763, Whitehall tried to exert new control over colonial trade by imposing first the Sugar Act and then, in 1765, the Stamp Act. To the colonies, however, these new acts signaled nothing less than a major shift in policy that was potentially oppressive and costly—and very much a departure from the previous 150 years of colonial experience. The gap between these

two divergent attitudes explains the rise of tensions that led to the Revolution. Because enforcement of acts of trade formed a central issue, the customs establishment in America would surface as a key point of conflict between the colonies and the mother country.²

THE SUGAR ACT: ENFORCEMENT OF CUSTOMS LAWS BEGINS

The defeat of France in the Seven Years' War (also called the French and Indian War) in 1763 ended the last continental challenge to British hegemony over North America, and, Britain thought, made control over the American colonies secure for the first time in a century and a half. Now, Whitehall reckoned, the plantations could finally begin to fulfill their duties to the mother country and obey those long-standing Navigation Acts. As a means of both conditioning Americans to enforcement of the trade laws and emphasizing the new policy, Parliament in 1764 enacted an updated version of the 1733 Molasses Act, called the Sugar Act. The new law mandated a duty of three cents per gallon of molasses and sugar imported into North America from the West Indies. The English saw the law only as "an experiment in Enforcement." Lord Grenville's real purpose, commented Horace Walpole, was less an effort to stamp out traditional "mischiefs" than it was to condition the colonists to growing enforcement of both old and new trade laws.³

Even before the Sugar Act was to take effect, the Treasury Office had taken administrative steps to pave the way for enforcement. "New orders had been given to the customs staff, additional officers authorized where needed, and regular ac-

²The British customs service in colonial America is ably dealt with in Thomas C. Barrow, *Trade and Empire: The British Customs Service in Colonial America, 1660-1775* (Cambridge, Mass.: 1967). Because of the inaccessibility of sources at the time of writing, the book is less successful in dealing with the period of confrontation after 1763.

³Horace Walpole, *Memoirs of the Reign of George the Third*, 4 vols. (London: 1894), vol. II, p. 51.

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counts requested.” “Contraband” trade, heretofore carried on “with too much Impunity,” was to come to an end. The act also provided financial rewards for compliance. Proceeds from condemnations were to be divided three ways: one-third went to the customs collector “for the use of the King” (it was, in fact, divided with the Crown); one-third to the colonial governor; and one-third to the informer. If the Navy were involved, the collector and governor turned one-half of their take over to the ship involved in the seizure.⁴

Some Americans understood the Sugar Act to be negotiable, as the navigation laws had always been. Colonial merchants had traditionally either avoided the old molasses duty entirely or, by arrangement with customs, pared it down to a penny a gallon. If the new act were to be enforced, they would be willing to compromise. This attitude was adeptly expressed in Providence, Rhode Island. A correspondent to the *Providence Gazette* noted that merchants would pay up to a penny a gallon “rather than run the risque of the customs house office” in town, but would not pay more, and would evade customs if necessary.⁵ This perception was not shared by those Americans who became Loyalists, however. Daniel Leonard, writing as “Massachusetten-sis” before the Revolution, described most American merchants as avaricious and suggested that their greed had political as well as economic roots. “A smuggler and a Whig [an opponent of the mother country] are cousins,” he wrote, “the offspring of two sisters, avarice and ambition. . . . The smuggler received protection from the Whig, and he in turn received support from the smuggler.”⁶

Whether prompted by profit or politics, smuggling, although always common in colonial America, increased precipitously

⁴Barrow, *Trade and Empire*, pp. 180–84.

⁵*Providence Gazette*, November 8, 1766.

⁶Daniel Leonard and John Adams engaged in a classic 18th-century newspaper debate in 1774 and 1775 in the pages of the Boston *Massachusetts Gazette*. Adams wrote under the pseudonym “Novanglus,” Leonard as “Massachusettensis.” The essays were later reprinted. See *Novanglus and Massachusettensis* (Boston: 1819), pp. 161, 169.

after 1764. Nor was the smuggling confined to rowing a cargo ashore by moonlight and stashing it in a sea-washed cave until it could be collected; much of it now was done during regular business hours. For example, in 1765 James Cockle, the collector of customs at Salem, Massachusetts, took a £50 bribe from the owner of the sloop *Gloucester* to undervalue the cargo. An informer provided evidence to John Temple, the surveyor general of customs for New England, who promptly sacked Cockle. Governor Francis Bernard just as quickly protested the dismissal, arguing in a letter to the Board of Trade in London that smuggling was a way of life in the colonies and that no individual collector should be singled out for punishment. Temple, who was outraged, accused the Massachusetts governor of both conspiring with Cockle (whom a witness had described as one of Bernard's "milch-cows") and sharing in the smuggling profits. That accusation may not have been far from the truth, and the phenomenon may well have been widespread in colonial ports.⁷

The Cockle incident was hardly unique. John Temple, a dedicated officer who would eventually be broken by the American Revolution, constantly complained about increased smuggling as a direct result of the Sugar Act, and about the unwillingness of the colonial British government establishment in America to do much about it. For example, he reported that American merchant vessels were avoiding New York City customs by sailing up the Hudson River to offload at Albany, where

⁷For the Cockle affair, see Affidavit of Philemon Warner, January 15, 1765; John Temple to Commissioners of Customs in London, February 2, 1765; Francis Bernard to Lord Halifax, no date, Treasury Records, Class 1, North America: Customs and Excise, Box 441, pp. 344-47, 372-73, Public Records Office, Kew, London (hereafter referred to as PRO).

For the Temple-Bernard rift, which grew to significant proportions in time, and for further detail on the Cockle affair, see *ibid.*, John Temple to Francis Bernard, August 28, 1764; William Wood to Charles Jenkinson, October 19, 1764; John Temple to Commissioners of Customs, London, September 10, 1764; James Cockle's Statement, September 4, 1764; Benjamin Crumbs and Benjamin Roberts to Cockle, July 30, 1764; J. Freemantle to Charles Jenkinson, November 29, 1764; John Temple to Commissioners of Customs, October 3, 1764, Treasury Records, Class 1, Box 429, American Customs, 1764, pp. 77-83.

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there was no customs port. To prevent this large-scale evasion, Temple requested that London place “a preventive officer at Albany,” but years would elapse before he could match enforcement to evasion.⁸

RESISTANCE TURNS TO RIOT: THE ROBINSON AFFAIR AT NEWPORT

At the beginning of 1765, American customs seemed to be functioning effectively in some places, if not in others. Governor William Franklin of New Jersey reported to Whitehall that “the Surveyor General and other officers of the customs have, by their vigilance, as far as I can learn, put a stop to the greatest part, if not the whole, of the illicit trade within this [New Jersey] district.”⁹ The same was true in Virginia. “In general I believe this colony stands as clear of illicit practices in Trade as any country that trades at all,” Virginia Governor Francis Fauquier reported to London.¹⁰

That calm exploded in April 1765, when the Newport, Rhode Island, customs collector seized and libeled the *Polly*. Libeling was the government’s written claim of illegality in admiralty law, the first step in a court action to confiscate cargo.

John Robinson had become collector at Newport in 1764; his district included also the part of southern Massachusetts that fronted Narragansett Bay. With great zeal and greater naiveté he immediately set out to enforce long-ignored customs laws. He found, in the words of one historian, that in New England, “the white sails [the merchants] were doing dirty work.” Robinson had several run-ins with Newport merchants before the day in

⁸ John Temple to Commissioners of Customs, London, April 10, 1766, Treasury Records, Class 1, Box 452, North America Customs and Excise, PRO.

⁹ William Franklin to the Earl of Halifax, November 8, 1764, Treasury Records, Class 1, North America: Customs and Excise, Box 442, PRO.

¹⁰ Francis Fauquier to the Earl of Halifax, November 20, 1764, Colonial Office Papers, Class 5, Virginia: Original Correspondence, Secretary of State, 1762–1767, vol. 1345, PRO.

May 1765 when he ordered Tidewaiter Nicholas Lechmore to board the *Polly*, a Taunton, Massachusetts, sloop that had been smuggling molasses into Newport. Robinson's seizure of the *Polly*, according to Nicholas Lechmore at least, was absolutely legal and fully justified. The ship's master Timothy Doggett, swore Lechmore, falsified and undervalued his cargo. "Mr. Robinson suspected [Doggett's] Report was not Just." Lechmore's affidavit was supported by the affidavits of several other people in a file received in London and revealingly titled "State of the Riot and Robbery at Taunton."¹¹

Nevertheless, hostile mobs in Newport protested this action, and Timothy Doggett swore out a warrant for Robinson's arrest. Taken and marched the many miles to Taunton with a halter around his neck and a jeering crowd at his heels, Robinson languished in jail for several days before John Temple, with no help from Governor Bernard, secured his release. Returning to Newport, Robinson found to his dismay that unrest and crowd actions threatened both him and his subordinates; the mob had even seized the customhouse itself. He and his men took refuge offshore aboard the British naval vessel *Cygnet*, where they remained virtual prisoners throughout the summer of 1765, conducting business as best they could from that improbable station.¹²

Although Robinson understood that if he eased up in libeling the *Polly*, "I might come on Shore in Safety and Rely on their [merchants'] Protection,"¹³ he refused to compromise. Instead

¹¹ Affidavits of Nicholas Lechmore, John Robinson, and others, May 4, 1765, filed together under the heading "State of the Riot and Robbery at Taunton. . . ." Treasury Records, Class 1, North America: Customs and Excise, Box 442, PRO; Edmund M. and Helen Morgan, *The Stamp Act Crisis* (Chapel Hill, N.C.: 1953), pp. 40-52.

¹² For the Robinson affair see *ibid.* See also John Temple to Commissioners of Customs, London, June 23, 1766; and *passim*, Temple Letter Book, Massachusetts Historical Society, Boston; Francis Bernard to Lord Halifax, May 11, 1765; and *passim*, Francis Bernard Papers, vol. III, Harvard College Library.

¹³ *Newport Mercury*, September 9, 1765; John Robinson to Commissioners of Customs, London, August 28, 1765, Treasury Records, Class 1, North America: Customs and Excise, Box 442, PRO.

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of trimming his sails to the prevailing winds, the collector published a blistering broadside to the people of Newport. Dated "On Board the *Cygnets*, Newport Harbour," it noted that Robinson could not return to his customhouse until the perpetual mob surrounding it dispersed. Because of that mob, he wrote, the customs officers "have thereby been deterred from the Execution of their respective Functions, and have shut up His Majesty's Custom House, not deeming it safe" to conduct business. He asked the crowd to scatter and offered a reward of \$100 to anyone "who will discover any or either of the [original] Said Rioters" who had seized the customhouse in the first place. "All Negroes excepted," he added, indicating clearly that blacks were a part of the original Whig mob practicing pre-Revolutionary "politics-out-of-doors."¹⁴

John Temple naturally became Robinson's champion, and accused Bernard of waffling in enforcing the existing trade laws out of fear of antagonizing the colonials. The Robinson incident made it painfully clear that it was easy for colonial officials to use the customs establishment as a scapegoat for unrest over trade law enforcement in general and the Sugar and Stamp Acts in particular. Robinson's treatment, wrote Temple, "is of such importance to the Revenue" that London must act. "The [Customs] Service suffers much in this Province [Massachusetts] for want of Law officers of the Crown" to provide quick legal redress for customs officers prevented from doing their duty. This was necessary, Temple explained, because customs personnel could not count on support from either the governor or his council.¹⁵

In his post-mortem Robinson himself affirmed the state of siege under which he was operating. "Our situation," he reported

¹⁴Broadside dated September 2, 1765, signed by Robinson and John Nicholls, comptroller of customs at Newport, Treasury Records, Class 1, North America: Customs and Excise, Box 442, PRO.

¹⁵John Temple to Commissioners of Customs, London, May 7, 1765, Treasury Records, Class 1, North America: Customs and Excise, Box 442, PRO.

to Whitehall, “exposes us [customs personnel] a prey to the lawless fury, not of a trifling Mob, but of a whole country, inflamed to an intolerable degree, Subject to no Rule or Order, but abandoned and licentious in Principles from the very nature of Government.” And he echoed Temple’s lament about the lack of proper local support. We are, he added, “without protection or support, either to enable us to do our Duty, or secure our place in Society.” Lechmore and John Nicholls, comptroller of customs at Newport, appended an equally revealing postscript to Robinson’s report, noting tersely that even months later they “receive various informations, threatening them or their Houses.”¹⁶

The seizure of the *Polly*, public wrath in Newport, and subsequent events in Massachusetts exposed major weaknesses in customs operations in North America. For one thing, the Robinson affair deepened the rift between Surveyor General of Customs John Temple and Massachusetts Governor Francis Bernard, a rupture that had first surfaced in the contretemps over the Sugar Act. For another, it made clear the power that mobs would exert over efforts to prevent customs enforcement in New England. Finally, it demonstrated all too well the relative weakness of customs officers when stacked against the power American merchants could wield when necessary.

The Robinson incident also indicated that even before the Stamp Act took effect, the Customs Service in America had become a political football, kicked around by competing English factions and colonial officials in the New World. Yet all this infighting, while delighting colonials who saw it as a way of preserving their relatively untaxed trade, raised very little reaction in London. English apathy in the face of this threat to the governance of the empire seems incredible now, but it was part of that lack of understanding of the colonial mind that contributed to the coming of the Revolution. Governor Henry Ward wrote twice to Whitehall

¹⁶Ibid., John Robinson to Charles Lowndes and Commissioners of Customs in London, August 28, 1765, postscript to same submitted as affidavit by Nicholas Lechmore and John Nicholls, August 29, 1765.

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in the aftermath of the Robinson affair requesting that Newport customs men be compensated for property damage done to their homes, as well as for loss of income sustained in the riots. No one in London bothered to answer, let alone provide compensation.¹⁷ Ten years later, just prior to independence, a Newport customs officer was still seeking “an indemnification by the Losses he has sustained in a Riot that happened at Newport in Rhode Island in August, 1765.”¹⁸

RESISTANCE AND RIOT: THE STAMP ACT

Events at Newport and Taunton almost immediately spilled over into Boston, which from 1764 on was the center of pre-Revolutionary activity. Anger over the Stamp Act ran deep in the commercially oriented Bay Colony. While the collector of customs, Roger Hale (who would soon return to England), was described as a “sensible man and a very good officer,” his second-in-command, Comptroller Benjamin Hallowell, was not well liked. His home was the first target of a hostile crowd on the night of August 26, 1765, when it was sacked and looted. This tactic of intimidation by crowd action became a hallmark of pre-Revolutionary furor; time after time, local customhouses and houses of customs officers were the easiest and most visible targets around.¹⁹

Trouble was expected from November 1, 1765, when the stamp duties took effect. But stamp shipments to the South were delayed, allowing customs officials in Georgia and Virginia temporarily to clear ships with documents attached to their papers certifying that

¹⁷Henry Ward to Lord Shelburne, June 25 and November 6, 1766, Treasury Records, Class 1, North America: Miscellaneous, Box 452, PRO.

¹⁸Entry of February 16, 1776, Treasury Records, Class 29, Minute Books, Board of Trade, January–December 1776, vol. 45, p. 23, PRO.

¹⁹“Diary of Josiah Quincy, Jr.,” August 27, 1765, Massachusetts Historical Society *Proceedings*, vol. IV (1860), pp. 47–51; J. Freemantle to Charles Lowndes, October 22, 1765, Treasury Records, Class 1, North America: Customs and Excise, Box 442, PRO.

the stamps were not available. The customhouse at Savannah, for example, blithely cleared ships for weeks in this way, avoiding trouble with locals in the process. The Chesapeake ports functioned the same way. The Surveyor General of Customs in Virginia, Peter Randolph, told his collectors to continue clearing vessels after November 1 as they had done before, explaining that the Board of Trade had failed to get the stamps to the southern colonies on time. He wrote to the Norfolk collector that "impossibilities will not be expected of us," adding that "our Conduct will stand justified."²⁰ This reprieve was short-lived, however, as the stamps arrived soon thereafter.

The stamps had reached the northern ports right on time, and those customhouses fared much worse. The customs collector in New York City reported on November 4 that "we are at present in the utmost confusion imaginable occasioned by frequent Mobs." With understandable exaggeration he wrote that "Five thousand men" had gathered outside the customhouse for several nights. "At present," he added without stretching the truth, "there is an end of all Government" in the city. The Sons of Liberty in the town, the collector disclosed, "insist we should clear vessells as usual without them [stamps]." The Sons in fact had become the government for the time being, and would call the shots in the city for the duration. "It is as much as our Lives are worth," confessed the collector, "to pretend to oppose any measure they [the Sons] direct."

This fact of life was brought home painfully to the New York City customs naval officer. Charles Williams was foolhardy enough to take it on himself to obey the law and used stamped paper in clearances out of the port. The Sons of Liberty convened a meeting in a nearby coffeehouse; the meeting got out of hand, and a mob

²⁰For Georgia, see the *Georgia Gazette*, November 7, 14, 1765; *The Colonial Records of the State of Georgia*, Allen D. Candler, ed. (1904-1915), vol. IX, pp. 439-40, 454-56. In Georgia, unlike Massachusetts, the governor and Council officially approved of the actions of the Georgia customhouses. For Virginia, see Peter Randolph to the Norfolk Customs Collector, November 2, 1765, *Pennsylvania Magazine of History and Biography*, vol. II (1878), pp. 298-99.

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left the coffeehouse for Williams' home, where they "broke open the Door and destroyed some of the furniture." The Sons, sensing that tactically they had allowed things to go too far, restrained the mob before too much damage was done and promised the crowd that Williams would publicly apologize the next day. This Williams did—mounted on a scaffold.²¹

Philadelphia customs Collector John Hughes summed up as well as anyone in the colonies both the hostility of Americans everywhere and the degree to which the customhouses formed the most visible targets for that animus. "No Custom House officer in America," he wrote to London, "dare venture to seize a Vessel, even if she came without any Papers at all." As far as Newburyport, Massachusetts, customs was concerned, these words were prophetic. A customs officer there used a revenue cutter to seize an unstamped cargo of molasses in Newburyport harbor. "Half a dozen boats well manned," the lieutenant governor of Massachusetts reported, "went after the [customs] officer, took the goods from him and the boat he was in and left him all night upon the beach."²²

By mid-December 1765 things had heated up in the South as well. The collector in Charleston reported that "no vessel can leave this Port," and both the stamp distributor and the customs officers prudently agreed not to force the issue. Francis Fauquier, the faint-hearted governor of Virginia, reported to London that "Dissatisfaction at the Duties laid by the late Stamp Act, which breaks out and shews itself on every trifling occasion," made customs enforcement of the Stamp Act impossible. "Dissent of its people of the colony against receiving the Stamps is too strong for my poor abilities to overcome." Unwilling to support his

²¹For events in New York City, see David Colden and Zachariah Hood to Commissioners of Customs, London, November 4, 1765, Treasury Records, Class 1, North America: Customs and Excise, Box 442, PRO; Morgan and Morgan, *The Stamp Act Crisis*, pp. 195–96.

²²Thomas Hutchinson to Thomas Pownall, March 8, 1766, Thomas Hutchinson Letterbook, vol. XXVI, Massachusetts State Archives, Boston; John Hughes to Commissioners of Customs, London, December 1, 1765, Treasury Records, Class 1, North America: Customs and Excise, Box 442, PRO.

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customs officers, he informed Whitehall that "The Flame is spread thro' all the Continent, and one colony supports another in their disobedience to superior powers."²³

Bowing to what had become inevitable, Parliament repealed the act, vowing to correct their earlier mistakes in failing to provide the means of independent customs oversight and enforcement. These matters were attended to in the Townshend Acts of 1767, which laid duties on a whole variety of colonial imports; promulgated major restrictions on colonial trade; and, most important from the perspective of customs operations, established the American Board of Customs Commissioners at Boston to oversee and coordinate customs enforcement on the spot.

BOSTON AND THE AMERICAN BOARD OF CUSTOMS COMMISSIONERS

By transferring full authority and decisionmaking capability from London to Boston, Parliament hoped that the American Commissioners could overcome the major impediment to the enforcement of the revenue laws. The Customs commissioners, who as a unit replaced the surveyors general of Customs in the several regions of North America, had the power to act on their own initiative, with no need to refer to Whitehall. This made possible, in theory at least, quick support of customs officers in America. But even as Parliament repealed the Stamp Act and pondered these new measures, reaction to that act doomed the new initiative before it even began.

For one thing, the failure of the repealed law had led to friction between the Navy and the Customs Service. Massachusetts Governor Bernard reported a "breakdown of cooperation"

²³ Francis Fauquier to Earl of Halifax, June 14, 1765, Fauquier to Lords Commissioners of Trade and Plantations, November 3, 1765, Fauquier to H.S. Conway, November 5, 1765, and passim, Colonial Office Papers, Class 5, Virginia: Original Correspondence of the Secretary of State, 1762-1767, vol. 345, PRO; C. Lloyd to Commissioners of Customs, London, December 12, 1765, Treasury Records, Class 1, North America: Customs and Excise, Box 442, PRO.

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between the two that spilled over into 1766.²⁴ Second, most of the colonies were already primed to resist any new enforcement. They had vehemently expressed their opposition both to the use of writs of assistance (which gave customs officers the direct power to enter warehouses and even private homes without a warrant in search of contraband) and to the trial of alleged customs offenders in admiralty courts in England, far removed from friendly juries and judges.²⁵ Finally, colonists possessed and used leverage of their own. Even before he sanctioned the acts that bear his name, Lord Townshend advised the Treasury Board that all budget negotiations between the New York Assembly and the governor were at a standstill and that this situation threatened elsewhere, too. The unappropriated money was badly needed to pay for the salaries and supplies of the troops stationed in the colonies.²⁶

Aware that a host of problems awaited them, the American Board of Customs Commissioners landed in Boston on November 4, 1767. Unhappily, this was the day before Pope's Day, colonial Boston's equivalent of Guy Fawkes Day, traditionally celebrated with parades, banners, and bonfires. As a welcoming gesture, reported Governor Bernard, the commissioners were lampooned along with the customary Catholic targets "by an inscription or two on the pageants [banners] which were carried about on the Day as usual." In less than three weeks, Sam Adams' Sons of Liberty had clearly drawn the lines of opposition. A proclamation posted on the liberty tree in Boston

²⁴Francis Bernard to Commissioners of Customs, April 29, 1766, Treasury Records, Class 1, North America: Customs and Excise, Box 442, PRO.

²⁵For more on the Writs of Assistance as a cause of the Revolution, and the central role of customs in that political struggle, see L. Kinvin Wroth and Hillier B. Zobel, eds., *Legal Papers of John Adams* (Cambridge, Mass.: 1965), vol. II, pp. 111, 113n, 125–28, 144, and passim. The colonial resolves encouraged by the Stamp Act Congress and passed by most of the colonial legislative assemblies featured prominently their hostility to trial in English admiralty courts. See, for example *Proceedings of the Congress at New York* (Annapolis: 1766), pp. 15–16; and *Pennsylvania Gazette*, December 5, 1765.

²⁶Lord Townshend to the Treasury Board, March 22, 1766, Treasury Records, Class 1, North America: Miscellaneous, Box 452, PRO.

threatened "to carry the commissioners and all their customs officers to Liberty Tree and there make them resign their Commissions." Several Massachusetts constituencies also sent remonstrances to London protesting both the Townshend duties and the arrival of the Board.²⁷

The Board was not without troubles of its own. From the beginning it was correctly perceived to be tied to the Francis Bernard-Thomas Hutchinson faction that controlled Massachusetts politics. This immediately marked the commissioners as enemies both to the elite merchant community and to the laboring classes that worked the waterfront.²⁸ To make matters worse, the Customs commissioners themselves were not able to form a united front. A few of the appointees resented the fact that one of their number, Charles Paxton, had purchased his commission in London. Paxton, an American, had had extensive experience with British customs in the colonies. Personal differences also separated Paxton from John Temple, who was perhaps the ablest of the five commissioners. Certainly he was the only one the colonists respected. The two men's estrangement was longstanding. After learning of Paxton's "appointment," Temple wrote to him: "No consideration shou'd tempt me to [remember] the pain that I receive at Recollecting past Insincerity and ingratitude, let it be sufficient that I now coolly tell you, all that is past I forgive and desire to forget. I shall always treat you like a Gentleman, but desire no further Intimacy than our offices necessarily Requires." ²⁹ To cap matters, one of the remaining

²⁷ Francis Bernard to Earl of Shelburne, November 14, 21, 1767, Colonial Office Papers, Class 5, Massachusetts: Original Correspondence of the Secretary of State, vol. 757, 1767-1768, PRO.

²⁸ This generalization was true for most of New England. For the Massachusetts situation, see E. Channing and A.C. Coolidge, eds., *The Barrington-Bernard Correspondence* (Cambridge, Mass., 1912). For Rhode Island see *Commerce of Rhode Island*, 9 vols., Massachusetts Historical Society, Series 7, vol. IX.

²⁹ John Temple to Charles Paxton, January 27, 1766, Temple Letter Book, 1762-1768, Massachusetts Historical Society, Boston. See also Maurice M. Smith, "Charles Paxton, Founding Stepfather," *Proceedings*, Massachusetts Historical Society, vol. 94, 1982.

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commissioners was John Robinson, promoted from the collector's post that had caused him so much suffering before and during the Stamp Act crisis. His practical experience may have been invaluable, but he could hardly have been in a conciliatory frame of mind in 1767.

Despite the hostility that threatened its mission, the American Board of Customs Commissioners moved quickly to improve enforcement of the trade laws. They were convinced that years of looking the other way had corrupted local customs personnel. "The persons employed in the Out Door Business [have] been guilty of Collusive practices," the commission reported to London. To neutralize the old guard in Boston harbor "we thought it necessary to employ some extra Tidesmen on board of vessels" arriving in that city, and issued new rules for their work.³⁰ "Tidesmen" were to board vessels before they docked and to oversee docking; they were not to leave the ship until a "land-waiter" (inspector) took over supervision of the goods. Meanwhile, the new instructions read, "there are usually two or more Tidesmen placed upon a Ship, who are by turns to take their Watches upon Deck, one of you are constantly to keep your Station there walking to and fro, and not to leave the Deck unguarded." Be alert for "hidey-holes," the inspectors were warned, and allow no offloading by night. "You are not, on any pretence whatever," came the final admonition, "to invite your *Wife* or *Friends*, or suffer them to be . . . entertained on board . . . nor presume to receive any treats or Entertainment from the Master, Mate or other Officers of the Ship." In other words, suspect everyone.³¹

³⁰Thomas Bradshaw to John Pownall, July 8, 1768, Colonial Office Papers, Class 5, Massachusetts: Original Correspondence, Secretary of State, 1767-1768, vol. 757, PRO.

³¹"Instructions by the Commissioners of His Majesty's Customs in America to Benjamin Sanford, who is appointed Tidesman at the Port of New Haven, 13 April, 1769," New Haven Harbor Collection: Custom House Miscellany, 1762-1775, MSS 57C, New Haven Colony Historical Society, New Haven, Connecticut. This was a printed form with the name and location filled in by hand, indicating that these were general instructions.

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At the same time the commissioners ordered customs clearance for those vessels engaged in the coasting (internal) trade. Because these ships were traditionally free of customs controls, they were frequently used for smuggling. "The officers of the Custom House cannot legally oblige, and ought not to insist upon those vessels who coast it" to clear customs, a contemporary journal protested, but regulation of the coasting trade nevertheless began in earnest in 1767.³²

The beefed-up customs operation in Boston, along with new regulations and stronger oversight of the coasting trade, all "gave umbrage to the Merchants."³³ That outrage was most notoriously expressed by John Hancock, who delivered the final blow to the Customs commissioners' authority in the colonies. He "went out of his way to show his contempt for the commissioners of Customs and make them disliked in Boston." The seizure of two of his sloops, the *Lydia* in April 1768 and the *Liberty* that June, created the furor that both he and his fellow merchants *and* the working class Sons of Liberty wanted. Boston customs collector Joseph Harrison had ordered two tidewaiters aboard the *Lydia* to check the manifest against the cargo before she reached port. Hancock forbade them to go below decks; they did anyway and were forcibly stopped and set ashore by the crew. The sympathetic Massachusetts attorney-general refused to prosecute Hancock, and Governor Bernard, fearing further violence, supported his decision. Refusing to knuckle under and supported by the Customs commissioners if no one else, Harrison seized the *Liberty* two months later, this time taking care to use sufficient force to hold the vessel while he libeled it and began the process of condemning it and its cargo.³⁴

³²Oliver M. Dickinson, ed., *Boston Under Military Rule, 1768-1769, as revealed in A Journal of the Times* (Boston: 1936), entry for January 12, 1769.

³³Thomas Bradshaw to John Pownall, July 8, 1768, Colonial Office Papers, Class 5, Massachusetts: Original Correspondence, Secretary of State. 1767-1768, vol. 757, PRO.

³⁴The story of the Hancock seizures is well known. A complete account may be found in Oliver M. Dickerson, *The Navigation Acts and the American*

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Riots in Boston followed, and “politics out of doors” reached new heights. Hancock claimed that both seizures were made without cause and were meant to punish him financially for his long-standing leadership of the opposition to British authority. The government saw it differently. Thomas Gage, the general commanding the redcoats stationed in and around Boston, reported that Hancock and his partner declared “publicly that they would land their Goods and would not pay the Duties . . . in defiance of the Officers of the Customs.” In fact, the two partners were arrested once Gage had gathered enough troops to guard the prisoners and prevent violence against the customhouse, the commissioners, and the government. “Mr. Hancock,” explained Gage, was, after all, “the Leader . . . of the Mob.”³⁵

The Hancock affair demonstrated just how tightly the customs officers were squeezed. Robert Hallowell told the Board of Trade in direct testimony that he heard Hancock himself declare that before the *Liberty* entered the harbor he would “run her cargo of Wines on Shore.” This he did, and he reported only 25 casks when there were several more. Hallowell also asserted that Thomas Kirk, one of the two inspectors sent aboard, was offered a bribe if he would “consent to hoisting out several Casks of Wine that night before the vessel was entered.” Kirk “preemptorily refused” and was imprisoned by the crew below deck. Kirk’s fellow inspector “was drunk, and had gone home to bed.”³⁶

Despite threats from the town that a “great uproar” would follow the *Liberty*’s seizure, H.M.S. *Romney* sent a prize crew

Revolution, (Philadelphia: 1951), pp. 232 ff. Less well known is the impact on the American Board of Customs Commissioners, the customhouse in Boston, and the ripples the Hancock seizures caused throughout the rest of the colonies.

³⁵Thomas Gage to Lord Hillsborough, March 5, 1769, in Clarence E. Carter, ed., *Correspondence of General Thomas Gage*, 2 vols. (New Haven, Conn.: 1931–1933), vol. I, p. 220. Many of the sources recounting the seizures specifically of Hancock’s vessels can be found in G.G. Wolkins, “The Seizure of John Hancock’s Sloop *Liberty*, Massachusetts Historical Society *Proceedings*, vol. XV (Boston: 1921–1933), pp. 251 ff.

³⁶Entry of November 29, 1768, Treasury Papers, Class 29: Treasury Board Minute Books, October 1767–April 1768, vol. 39, PRO.

aboard Hancock's ship and brought it to the customhouse dock. "The Mob laid hold of the Ropes and pelted the British officers and seamen with stones"; only the threat of force temporarily drove the crowd away. Later that day, however, Collector Harrison and Hallowell "were surrounded" as they left the customhouse "by a Mob of four or five hundred persons who beat and wounded them and it was with difficulty they escaped with their life."³⁷

The confrontation with Hancock proved a disaster. In June 1768, barely six months after setting up shop in Boston, the American Board of Customs Commissioners was forced to flee the town. More rioting ensued. "All real Power is in the hands of People of the lowest Class," Governor Bernard wrote. "Civil Authority can do nothing but what they will allow." The governor told "the Commissioners that I can give them no Protection." The commissioners first boarded the British frigate *Romney* anchored in Boston harbor; when it became clear that the mob would not let them ashore soon, they took more permanent refuge on Castle William, an island at the edge of the harbor. The colonial government caved in. "I told the Council [the upper house of the legislature] that I was ready to put the Question for applying to the general [Gage] for Troops." The governor was told by the Council "that they did not desire to be knocked on the head; I told them that I did not desire it neither." The fear of a knock on the head was in the air in Boston. By 1768, Lieutenant Governor Thomas Hutchinson reported, revolutionaries "armed with bludgeons" were used as enforcers to intimidate both customs personnel and commissioners alike, making Castle William a more attractive retreat than it otherwise might have been. The commissioners were left to their exile.³⁸

³⁷ Ibid.

³⁸ Francis Bernard to Thomas Gage, July 2, 1768, Colonial Office Papers, Class 5, Massachusetts: Original Correspondence of the Secretary of State, 1767-1768, vol. 757, PRO. For Hutchinson's observations see Thomas Hutchinson, *The History of the Colony and Province of Massachusetts-Bay*, Lawrence S. Mayo, ed., 3 vols. (Cambridge, Mass.: 1936), vol. III, 134-36.

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They did, however, order Robert Hallowell, the comptroller of customs at Boston and collector Harrison's second in command, to embark immediately for England to report the state of affairs to the Board of Trade in person. That Hallowell was not given an audience by the Board until November 29, 1768, only underscored the Crown's continuing inability to rule from a distance. Hallowell pleaded that the Board should order protection for the commissioners and customs personnel from further harassment by the crowd, adding incorrectly that "the people of Boston would not be joined by any of the better sort of People if actual resistance was to be made to the Government." Removed from the situation, Hallowell did not understand that opposition to customs enforcement derived not only from artisan Sons of Liberty but from elite merchants as well.³⁹

By the winter of 1769 Lieutenant Governor Thomas Hutchinson had gained that understanding. In a summary of the events in Boston he reported to the Board of Trade that there was "prejudice against this new Board of Customs as soon as it was appointed." People of all classes, he disclosed, "treated them with uncommon neglect and contempt." Only John Temple, who perceived that there were two sides to the story and conveyed his sympathies to the colonists on occasion, was given dispensation to return to town. In general, Hutchinson added, "until their withdrawal to the Castle" the remaining four "were the objects of popular Odium." Only the arrival of Gage's troops to serve as personal bodyguards made it possible for the other four commissioners to return to Boston. And yet, insisted Hutchinson, it was not the commissioners' behavior that was at the root of the problem; it was long-standing colonial resistance to either taxation or enforcement. The board acted cautiously and prudently, he felt, but with virtually inflexible "fidelity to their Trust" to enforce revenue laws and oversee customs collection. This put customs officers throughout America on the spot,

³⁹Entry for November 29, 1768, Treasury Papers, Class 29: Treasury Board Minute Books, October 1767–April 1769, vol. 39, PRO.

especially once word of Boston's resistance to the Townshend Acts spread to other ports.⁴⁰

The problem facing all Customs personnel in America, Hutchinson concluded, was that the colonists with good reason feared that the combination of the Townshend Acts and their enforcement on the scene by the board "would cause new charges and new and heavy burdens upon Trade." Until 1767, he reminded the Board of Trade, "for two or three years together no customs officer cared to carry into execution" either the Sugar or the Stamp Act. Now, closely supervised by the old world and the new, customs people were squeezed between government pressure for enforcement and "Popular Clamour" from the colonists. "Popular Clamour" won.⁴¹

The story's sequel offers testimony to the stress under which Boston customs officers functioned. Hollowell remained in England and soon resigned in favor of his son. Six months after the *Liberty* affair, a worn-out and troubled Joseph Harrison was granted permission to resign the collectorship and "return to England for the recovery of his Health." The Treasury Board directed "that no deduction shall be made from [his] salary . . . on account of his absence." George Meserve, Hollowell's replacement at Boston, was transferred to a supposedly safe harbor at Piscataqua, New Hampshire, after less than a year in the city. Surveyor of Customs and leading searcher Daniel Chamier resigned within a year of the incident.⁴²

The customs commissioners showed the strain, too. On January 15, 1768, John Temple asked "leave to return to England for the establishment of his health." A month later John Robinson wrote that "the commissioners think it necessary

⁴⁰Thomas Hutchinson to Lord Hillsborough, February 3, 1769, Colonial Office Papers, Class 5, Massachusetts: Original Correspondence of the Secretary of State, 1768-1769, vol. 758, PRO.

⁴¹*Ibid.*

⁴²George Onslow et al. to Joseph Harrison, February 1, 1769; Lord North et al. to Daniel Chamier, July 24, 1770; Lord North to George Meserve, September 7, 1770; Treasury Papers, Class 1, Various Out Letters, America, 1763-1778, vol. 28, PRO.

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that one of them should come to England this Year [and] that he should be the Person.” Leaving Boston while under fire was, however, a weakness the Treasury lords would not tolerate, and so replied that “they do not think it fit at present to give leave to any of the Commissioners to come to England.”⁴³

BEYOND BOSTON: THE CUSTOMS SERVICE AND THE TOWNSHEND DUTIES

Trouble flared elsewhere in Massachusetts as well after the Townshend duties took effect. Customs officers at Newburyport who tried to rescue informer Joshua Vickery were “greatly abused.” Vickery himself was put in the stocks, then paraded through town with a rope around his neck, hit with eggs, and locked in a warehouse over a weekend before being released.⁴⁴ In neighboring Salem, Tidewater James Rowe was subject to much the same treatment. Having refused a bribe, he pressed a seizure on the collector in 1769. For his efforts he was tarred and feathered on the town common, hung with placards branding him an informer, and wheeled in a cart through the town. After the local Sons of Liberty warned him out of Salem, the customs commissioners transferred him to Newburyport to avoid another incident. Rowe was either indefatigable or just plain stubborn, for a year later he reported “an illicit Trade” in Newburyport, “carried out there in favor of the Merchants to the prejudice of the Revenue.” To prevent smuggling, he said that a “cutter has to be stationed off Cape Cod,” and he volunteered to command it.⁴⁵

Cape Cod and the off islands were indeed havens for

⁴³ Entries of May 3, 1768, Treasury Papers, Class 29, Treasury Board Minute Books, October 1767–April 1769, vol. 39, PRO.

⁴⁴ *Essex Gazette*, September 27, 1768; Customs Commissioners to the Lords of the Treasury, February 12, 1768, Colonial Office Papers, Class 5, Massachusetts: Original Correspondence of the Secretary of State, 1767–1768, vol. 757, PRO.

⁴⁵ *Essex Gazette*, September 13, 1769; John Robinson to Lords of the Treasury, November 27, 1770, Treasury Papers, Class 1, Various Out Letters, America, 1763–1778, vol. 28, PRO.

smuggling. A would-be smuggler taken at Falmouth on the Cape “was rescued out of the Custody of our officers,” the commissioners reported in 1768; the customs men “were at the same time attacked by a Mob.” To add insult to injury, Collector Francis Waldo, one of the victims, claimed that the customs commissioners had decided in 1767 that he made enough in fees and so suspended his salary! Under “the present circumstances,” he wrote Whitehall with classic understatement, that seemed a little unfair. He pointed out that he had been collector since 1757 and deserved better treatment, but the Treasury lords simply sent him back to the commissioners.⁴⁶

While saving money on the Cape, the commissioners were spending it on Nantucket. Samuel Proctor was named collector there because “the inhabitants of Nantucket, who are mostly of the persuasion called Quakers,” were grossly evading the revenue laws. The commissioners ordered all vessels arriving in Boston from the island without Proctor’s clearance to be seized, even if they claimed only to be coasting. The extra work in regulating the coasting trade, commented the *Boston Evening Post* about the Nantucket plan, was handled by new appointees. “If quarters are to be provided by the people for Customs-House officers who are daily increasing upon us,” the *Post* added facetiously, “we shall quickly perceive that we are without quarters ourselves.”⁴⁷

Ever since Collector John Robinson’s seizure of the *Polly* in 1765, Rhode Island had remained a center of revolutionary resistance. With the passage of the Townshend Acts, however, the center of that resistance shifted from Newport to Providence. Smugglers there were left undisturbed; two merchants who had been arrested, charged, and tried for evasion in 1768 “were acquitted” by a local jury “thro’ the Combination and Influence

⁴⁶ Commissioners of Customs to the Lords of the Treasury, February 12, 1768, Colonial Office Papers, Class 5, Massachusetts: Original Correspondence of the Secretary of State, 1767–1768, vol. 757, PRO; Minutes of Treasury Lord Grey Cooper, September 29, 1769, Treasury Papers, Class 1, Various Out Letters, America, 1763–1778, vol. 28, PRO.

⁴⁷ *Boston Evening Post*, October 3, 1768.

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of the People.” The Providence Sons of Liberty encouraged this protective attitude. They also encouraged action. “For the collection of the [Townshend] duties,” a proclamation posted on the town’s liberty tree in the spring of 1769 proclaimed, the English “have sent fleets, armies, commissioners, guarda costas, judges of the admiralty, and a host of petty [customs] officers, whose insolence and rapacity have become intolerable.”⁴⁸

Within a few months, Providence Tidewater James Saiville, whom the Sons believed to be a paid informer as well as a customs agent, “was seized while on duty.” He was “gagged; had his clothes cut from his body; was covered with turpentine and feathers from head to foot; was beaten; had dirt thrown on him; was carried about in a wheelbarrow.” Collector Richard Reeve offered a reward of £50 for the capture of the guilty parties, with no success.⁴⁹

BEYOND BOSTON: THE TOWNSHEND ACTS IN THE SOUTH

The upper southern colonies did not really begin to respond to revolutionary provocation until after the passage of the Townshend Acts. In general, tensions were lower in Virginia than in New England, although problems did exist. Before dispatching one of his frigates to Hampton Roads to show the flag, Admiral Samuel Hood, commanding the British fleet in America in 1768, reported to the Admiralty that “Disturbances in Virginia and other Provinces to the Southward . . . are as great

⁴⁸ Commissioners of Customs to the Lords of the Treasury, February 12, 1768, Colonial Office Papers, Class 5, Massachusetts: Original Correspondence of the Secretary of State, 1767–1768, vol. 757, PRO; and *New York Journal Supplement*, April 27, 1769.

⁴⁹ *Providence Gazette*, June 10, 1769. A few months later a New Haven, Connecticut, tidesman suffered a similar fate. He was put on an “eminence” (scaffold) where he was made to promise never to turn anyone in again, “then given a coat of tar, two pillows of feathers were emptied over him, a pair of horns was fixed in his head, and he then was permitted to get out of town.” See the *Boston Gazette*, September 18, 1769. The same tensions prevailed in the Port of New York; see the *New York Journal, Supplements* of March 2 and July 6, 1769.

as they well can be without actual Rebellion.” Virginia Governor Norborne Botetourt confirmed that trouble was brewing. “I must not venture to flatter you with hopes,” the governor wrote to Lord Hillsborough. Virginians will never “willingly submit to being taxed by the Mother Country; the reverse is their Creed.” The Virginia House of Burgesses invoked that creed in 1769 by formally protesting the Townshend Acts as “injurious to property, and destructive to Liberty.” Tensions remained low by Massachusetts standards, however, primarily because there were so few customs officers to oversee such a large and difficult area, allowing smuggling, according to John Blair, “to thrive not a little.” There were “several creeks in the lower part of the [Chesapeake] District, very inviting to illicit Trade.”⁵⁰

The coast of South Carolina, in contrast, was much easier to patrol; consequently, confrontation there rivaled that in New England. Conflict in Charleston revolved around Henry Laurens, a wealthy merchant who turned out to be as much a revolutionary catalyst in the Deep South as John Hancock proved to be in the North. From 1767 on, Laurens felt himself to be victimized by the Charleston customhouse’s efforts to enforce the Townshend duties. But if the customs collector had it in for him, Laurens proved he was quite able to take care of himself. About the time the Townshend Acts were to go into effect, Daniel Moore took up the post of customs collector. Moore had arrived from England in March 1767, just in time to begin enforcing the stiff new duties in a strange town. He soon found himself embroiled with town merchants in general and with Laurens, who was widely understood

⁵⁰ Norborne Botetourt to Lord Hillsborough, February 18, May 19, 1769, Colonial Office Papers, Class 5, Virginia: Original Correspondence with the Board of Trade, vol. 1332, PRO; Samuel Hood to Philip Stephens, November 22, 1768, Colonial Office Papers, Class 5, Massachusetts: Original Correspondence of the Secretary of State, 1768–1768, vol. 758, PRO; John Williams to the Collector of Customs of the James River District, March 14, 1769, British Board of Customs Papers, Class 21, Entry Book of Out-Letters from Boston, America, 1768–1775, vol. 16, PRO; Botetourt to Hillsborough, January 24, 1770, John Blair Jr. to Hillsborough, January 24, 1770, Colonial Office Papers, Class 5, Original Correspondence with the Board of Trade, 1770–1772, vol. 1333, PRO.

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to be the greatest evader of customs laws, in particular. The two men seemed to take an instant mutual dislike of each other, and during the six months he lasted in Charleston, Moore seized several of Henry Laurens's vessels.

Like many of his fellow collectors in large ports, Moore was soon isolated and scorned. His effectiveness at an end, he was transferred to a safer post back home by the end of the summer of 1767. The day before he was to leave, Laurens paid him a visit. "I took occasion to speak to Mr. Moore on some part of his conduct towards myself, resolved not to lay a finger on him," recalled Laurens. But his resolve did not last long. "His base behaviour threw me off my guard," Laurens wrote to a friend. "My first resolutions vanished and a new one to twist his Nose took place and was instantly put in Execution."⁵¹ This insult to the departing collector made Laurens an instant celebrity, first in South Carolina and ultimately throughout the colonies.

The troubles in Charleston did not end with Moore's departure. George Roupell, the deputy collector who replaced Moore, continued his predecessor's policy of harassing Laurens's ships, and, in July 1768, seized the sloop *Ann*. Laurens sued for damages and took his case to the public. "We consider no part of the money so wrested from us," Laurens wrote in an article published anonymously in the *South Carolina Gazette*, "could be expected to go into the treasury." It went instead, he alleged, into the pockets of the customs officers in town.⁵² After a year of litigation, Roupell could not prove his case, and Laurens won a judgment for damages. Those damages, however, were paid out of local customs revenues.⁵³

Accounts of the events in Charleston circulated widely through the colonies, as if to attest that the South suffered as

⁵¹ Henry Laurens to James Habersham, September 5, 1767, *The Papers of Henry Laurens*, George C. Rogers, Jr., and David R. Chesnutt, eds., 10 + vols. (Columbia, S.C.: 1970-), vol. V, p. 296.

⁵² *South Carolina Gazette*, July 27, 1769.

⁵³ See Account of October 19, 1769, *The Papers of Henry Laurens*, vol. VII, pp. 168-69.

much as New England at the hands of English customs. "Swarms of searchers, tidewaiters, spies, and other underlings," the *Pennsylvania Gazette* disclosed, "now abound, and which were unknown before the board of Commissioners was established among us." These customs agents were "thirsting after the fortunes of worthy and wealthy men like Laurens."⁵⁴

By the time the Townshend Acts were repealed in 1770, both English credibility and the Customs Service in America were in a shambles. As Americans increasingly allied themselves either with those who urged support of the crown or those who called for separation from it, customs personnel found themselves caught in the middle of this conflict of loyalties. Perhaps none felt this as keenly as those stationed in Boston.

THE CUSTOMS SERVICE AND THE TEA PARTY, 1770-1774

Both to preserve the principle of its right to tax its colonies and to save face, the British government retained a symbolic tax on tea when it repealed the Townshend duties. American resistance after 1770 fixed on that symbol. Boston as usual led the way. "Large Quantities of Teas," the commissioners cautioned collector Joseph Harrison early in 1772, "were introduced in the course of the last year which we are persuaded could not have happened without the Negligence or Connivance of the out of doors [customs] officers." The commissioners charged the Boston customhouse with succumbing to the "encouragement" of town merchants to look the other way when tea arrived. "We do therefore expect that you keep a watchful Eye upon the Conduct of the several officers under your direction," Harrison was warned.⁵⁵

⁵⁴This satirical piece appeared in the *Pennsylvania Gazette*, October 19, 1769, and in the *Virginia Gazette*, November 9, 1769, and probably elsewhere as well. Laurens's troubles were also mentioned in the *Boston Evening Post*, February 20, 1769.

⁵⁵William Burch, Benjamin Hallowell, and Charles Paxton to Joseph Harrison, January 23, 1772, Boston Custom House Letterbook, 1763-1772, Essex Institute Historical Collections, Salem, Mass.

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The enforcement problem, meanwhile, had spread far beyond Boston. "Illicit practices are carried on by vessels arriving at Ipswich, Squam, Beverly, and the Creeks and ports adjacent," the commissioners disclosed, and suggested that the Boston customhouse name a "Riding Officer [mounted Inspector] to visit and inspect these places." In a final and wholly vain effort to stop the flood of illegal tea, the commissioners promised to "reward" faithful officers who "acted with Spirit and Propriety" and to "punish those who shall appear to have been remiss in their endeavours to prevent or discourage such illicit Practices." ⁵⁶ But customs officers who did attempt to enforce the tax on tea, whether in Boston, Rhode Island, or Philadelphia, met with "Ill-Treatment and Obstruction." ⁵⁷

Whitehall did what it could. It ordered Admiral Richard Gambier to use his fleet to "Support and protect" the "Officers of the Revenue" at Boston. By this time, however, the Boston customhouse was so demoralized that not even the navy could help. When these naval officers came ashore in Boston, their colleagues in the customhouse let the "Law Officers of the Colonies" arrest them on civil warrants for damages and then refused to testify that the seized goods had been smuggled. One ship's captain bluntly asked that "the Officers of the King's Ships may know what protection they are to expect from the Customs if they are arrested for executing their duty." A customs enforcement assignment, he added, "is increasingly disagreeable to both Captains and officers." ⁵⁸ By 1773, then, even before the Tea Party, customs enforcement in New England was in disarray.

The Tea Party—an event that needs no recounting here—resulted in the dismemberment of the Boston customhouse. Both the Whig leaders of the rebellion in Boston and the government

⁵⁶ *Ibid.*, Burch, Hallowell, and Paxton to Harrison, July 9, 1771, and October 22, 1771.

⁵⁷ John Pownall to John Robinson, November 16, 1771, Colonial Office Papers, Class 5, Correspondence of the Treasury and Customs, 1771–1774, vol. 145, PRO.

⁵⁸ *Ibid.*, John Montagu to John Pownall, October 26, 1772.

at Whitehall agreed on that, although for different reasons. Stop importing tea, smuggled or otherwise, one Whig propagandist observed after the Tea Party, "and you will find the Commissioners will soon leave you; for they are a kind of eagle [vulture] that will be in no place longer than there is a carcase to eat." Whitehall's thinking behind the Intolerable Acts (which included the closing and blockading of the Port of Boston) followed the same logic: remove the source of friction (Boston harbor) and the irritation would disappear. Consequently, the Boston customhouse was actually abandoned, and its personnel reassigned to handle the expected increase in business at Nantucket, Plymouth, and Salem. The commissioners were ordered "to take with them to Salem such of the Tidesmen and incidental officers now employed at Boston." ⁵⁹

Only the new collector remained to provide a symbolic presence in the deserted customhouse. Richard Harrison reminded Whitehall that he was there on salary alone; with the port closed, he could collect no fees to supplement his income. The letter he wrote to the Board of Trade asking for compensation for lost fees describes the state of things in Boston. "Your petitioner executed at the hazzard of his Life the Duties of his office, and although left without any other support . . . he never quitted his station," despite the fact that all other customs officials, including the commissioners, "were oblidge to take refuge at the Castle." His records were ransacked, the customhouse was vandalized, and Sam Adams' Sons of Liberty had even "seized the boat belonging to the Customs House and dragged her up into the middle of the Town" as a symbol of their triumph.⁶⁰

Smaller versions of the Tea Party held elsewhere in the colonies disrupted but did not destroy customs operations. Remarkably, the service hung on in most places until the final break with England.

⁵⁹ *Boston Gazette*, August 29, 1768; Lords of the Treasury to John Robinson, March 31, 1774, Colonial Office Papers, Class 5, Correspondence of the Treasury and Customs, 1771-1774, vol. 145, PRO.

⁶⁰ Richard Harrison's petition, December 16, 1775, Treasury Records, Class 1, North America: Miscellaneous, 1775, Box 515, PRO.

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1775: CRUSHING THE COLONIAL CUSTOMS SERVICE

Throughout the 1770's local American officials increasingly stepped in to fill the void left as Britain abdicated its colonial rule. Customs was often the only surviving government presence in a community. As we have seen, that presence was everywhere threatened from without and weakened from within.

The same internal and external pressures affected customs officers in all the colonies. "Mr. Thomson, the collector at Savannah," reported Charleston Collector George Russell, "is now ready to Embark on account of his health for England." As for himself, he wrote, "I am in great trouble and uneasiness not knowing how to help myself as we are totally without support in this Province." He and his comptroller fled the city soon thereafter.⁶¹ Duncan Stewart, the collector at New Haven, requested a year's leave and got it.⁶²

Leaving was not always a happy answer. Trouble caught up with George Meserve even in the deep woods of New Hampshire. "Every day produces something new," complained the former Boston comptroller, "and brings fresh terrors with it to the friends of Government." Within days of the Battle of Lexington in April 1775, "a party of Armed Men came into Town from the Country" to terrorize "obnoxious Tories, as they called them." They also threatened the Piscataqua customhouse. Officers there "Determined to defend ourselves if attacked and have ever since kept Watch there by turns, four at a time which is and will be heavy duty expences." He and his staff would stay on, promised Meserve, "so long as we dare abide here [and] exert our utmost endeavours for the Interest of the Crown and Revenue."⁶³

To make matters worse, the wounded service was now charged with ticklish new responsibilities. Collectors were in-

⁶¹ *Ibid.*, George Russell to Commissioners of Customs, July 3, 1775.

⁶² Entry of January 16, 1776, Minute Books, Board of Trade, Treasury Records, Class 29, vol. 45, p. 4, PRO.

⁶³ George Meserve and Robert Traill to Commissioners of Customs, May 18, 1775, Richard Reeve to Grey Cooper, May 22, 1775, Treasury Records, Class 1, North America: Customs, 1775, Box 513, PRO.

structed to watch out for arms and ammunition being smuggled into the colonies against the day when open war would break out. "To prevent further arms smuggling," New York port comptroller Lambert Moore reported to Whitehall, "we have ordered our Tidesmen on board all Vessells from Great Britain and have given directions to our outdoor officers carefully to search every Vessell that arrives from Foreign Ports." The same vigilance was ordered in the Bay Colony. In Boston, arms were being transferred from the customhouse to the Crown powderhouse when "some people appeared and carried it off from the [Tide]Waiter, who had been in charge." When the acting collector protested, he was told to look the other way, because "Indians" (a reference to the colonists who attended the Tea Party disguised as American Indians) would not mind "wreaking our resentment on you in a private manner."⁶⁴

In addition to arms control, the Board of Trade also required customs officers in late 1775 to engage in intelligence gathering. "Proper officers" were to "search for and seize all Letters and Papers on board any ships or vessells that are cleared for any of the Colonies now in Rebellion against the King." As the order applied to all coasting vessels, the American Customs Service was included in this duty, too. American personnel were instructed to make their seizures at the last moment before sailing and to maintain "secrecy" in all such operations.⁶⁵

These additional responsibilities only complicated a dramatically deteriorating situation. As open rebellion struck one port after another in the course of 1775, the American Customs Service collapsed completely. Intimidation invariably followed enforcement. When a vessel owned by Philadelphia merchant David Campbell was seized by a tidesman early that year, Campbell "went in the night to the Tide Surveyor's lodging with

⁶⁴ Ibid., Richard Reeve to John Robinson, January 17, 1776; Lambert Moore to Richard Reeve, December 22, 1774; and Richard Reeve to John Robinson, October 17, 1775; *Massachusetts Gazette*, January 16, 1775.

⁶⁵ R.E. Philips to Custom House Collectors, December 4, 1775, Treasury Records, Class 1, North America: Miscellaneous, 1775, Box 515, PRO.

Pistols and threatened to take his life” if the latter did not withdraw the libel. Collector Zachariah Hood complained that he could not have enforced the libel anyway, because there was a “Mob always ready” to do the merchants’ bidding.⁶⁶ “An angry mob” assaulted Robert Byrne, the surveyor at Bohemia and Sassafras, Maryland, when he tried to libel a local vessel. Byrne, Whitehall noted, was the victim “of a violent outrage committed upon him in execution of his Duty . . . by a daring and licentious Rabble.”⁶⁷

In New York City, the collector of customs decided it was more important to maintain the service’s symbolic functions than its governmental ones. “The merchants in general behave well,” collector Andrew Elliot disclosed, so long as they are allowed to “land at the Customs House door without a permission.” Thus goods were landed more or less legally, although no duties were paid. For the collector and the comptroller it was enough that they were “keeping open the old Channel” of communication. Anything more was impossible: “There are 1900 Connecticut People [militia] Encamped within 300 yards of the Collector’s House, and all Letters are opened that can be got at.” Yet even this *modus vivendi* ultimately failed. A mob seized the customhouse in April 1775. “A number of armed men marched to the Collector’s and drew up before his House in the road.” A committee told him “not to enter [the customhouse again] or clear any more Vessels,” or “the customs house should be shut up.”⁶⁸

Nor was the breakdown of operations limited to New England and the middle colonies. James Kitching, the collector at Sunbury, Georgia, libeled the schooner *Lively* early in 1775 for

⁶⁶Zachariah Hood to Commissioners of Customs, March 6, April 7, April 29, 1775, Treasury Records, Class 1, North America: Customs, 1775, Box 513, PRO.

⁶⁷*Ibid.*, Robert Byrne to Commissioners of Customs, April 19, 1775, and Richard Reeve to Grey Cooper, April 19, 1775.

⁶⁸*Ibid.*, Andrew Elliot and Lambert Moore to Richard Reeve, April 29, 1774, July 8, 1775; Grey Cooper to Commissioners of Customs, July 18 and November 7, 1775.

running illegal weapons to the colonists. Making his seizure "by putting the King's broad Arrow" on the attainted crates, he brought the vessel into Sunbury harbor. Within hours, "Town inhabitants with many others from the Country were gathered under a Liberty Pole." A committee was formed which "sent an order to Isaac Antrobus [the searcher of the port stationed aboard the schooner] "to depart the Town in half an hour, and not to return till 9 the next morning." When Antrobus refused, 20 or so colonists boarded the ship, "laid violent hands" on him, and "hoisted him over the side into a boat and Conducted him out of Town." The arms were then offloaded and added to the Revolutionaries' local cache.⁶⁹

The collapse of the Customs Service even destroyed its most faithful servants. John Temple, quondam surveyor general of Customs for New England and the only member of the American Board of Customs Commissioners respected by the colonials, returned to England after 15 years of duty in the New World, only to find himself charged with a discrepancy in his accounts. As all his records were either destroyed by the fighting or held by the rebels in America, Temple could not fight his government's claim, and was forced to pay the difference. It was the final humiliation of his career with the ill-fated customs establishment.⁷⁰

What does Temple's odyssey tell us? First, that there was a serious and chronic gap in communications between Britain and its customs agents in the colonies. Second, that the Board of Trade and the Treasury at Whitehall operated in their own unreal world, with no true understanding of conditions abroad. The customs experience in British North America exposed these classic defects in imperial-colonial relations. The colonial Customs Service was, in the end, the lightning rod for the tensions resulting from the disintegration of the English governance of America.

⁶⁹Ibid., James Kitching's Deposition, June 29, enclosed in Richard Reeve to Grey Cooper, August 12, 1775.

⁷⁰Entry for January 23, 1776, Treasury Records, Class 29, Minute Books of the Board of Trade, January-December, 1776, vol. 45, PRO.

Chapter II

ORIGINS OF THE U.S. CUSTOMS SERVICE, 1783–1807

There was no national Customs Service in the 1780's. Weak central government under the Articles of Confederation, coupled with the assertive sovereignty of the states, ensured that each State would form and control its own customs organization. Efforts to secure a national impost bill failed, largely because of the overriding fear, still fresh in revolutionary minds, of the power of the purse in the hands of a central government. From 1781 to 1789, then, customs would labor along as a function of the sovereign states, with revenue accruing to them and not to the United States. The states would appoint customs officers and tidesmen, collect the revenue, and spend it; the abortive impost bills of 1783 got fatally caught up in the larger issue of a national versus a federal union—and that debate would be resolved only in 1787 at the Constitutional Convention.

This hiatus between independence and constitutional nationalism eroded respect for customs enforcement, if indeed any remained after the wholesale abuses that characterized the coming of the American Revolution. State impost laws were indifferently and unevenly enforced. One state customs collector wrote incoming Treasury Secretary Alexander Hamilton in 1789 that “under the State government by far the greatest part of these Vessels found means to avoid the regulation then prescribed.” Coasting vessels in particular, he added, “have so long trampled

upon the revenue laws of this State (Massachusetts) with impunity that they now think they are bound by no Laws.”¹

By no means the smallest task of the new Customs Service in 1789 was to establish its integrity and authority over a cynical population. The enabling legislation of July 1789, among the earliest laws passed by the First Congress under the new Constitution, clearly laid down the organization of the Customs Service. The first decade of national sovereignty also left its political imprint on the service: from the beginning, it had mixed enforcing the revenue laws with the strengthening of whatever political party happened to be in power. The politicization was perhaps inevitable, given that in these early years it was by far the largest agency of the new government. It was also one of the most visible in all the key communities of the new nation. Part of this visibility, which in turn heightened both the administrative clarity and political involvement of the service, was due to its leadership: the first roster of customs officers reads like a Who's Who of Continental Army veterans and civil leaders of Revolutionary state governments. Some of the visibility was due to the low incidence of corruption, considering the size of the service and the informality with which it handled its monies.

But the largest part of Customs' visibility stemmed from its being the largest contributor of income to a nation struggling to emerge from the impoverishment forced on it by the Revolutionary War and the ensuing fiscal failures of the Confederation. Between 1789 and 1800, the U.S. government took in \$5,717,000 in revenues. Of this \$5,020,000 (88 percent!) derived from U.S. Customs Service income.²

¹ Cited in Leonard D. White, *The Federalists: A Study in Administrative History, 1789-1801*, 2d ed. (New York: 1965), p. 461. For information about the role of the impost and customs issue in the larger political context of the Confederation, see Richard H. Kohn, "The Inside History of the Newburgh Conspiracy: America and the Coup d'Etat," *William and Mary Quarterly*, Third Series, vol. XXVII (1970), pp. 204-13. For a detailed study of the first decade of the U.S. Customs Service, see Carl E. Prince, *The Federalists and the Origins of the U.S. Civil Service* (New York: 1977), pp. 21-132.

² Figures provided by Michael N. Ingrisano, Jr. of the Customs Service.

Origins of the U.S. Customs Service

THE CUSTOMS SERVICE ORGANIZES, 1789

Three laws passed in rapid succession in July 1789 laid the organizational foundations that would survive into the 20th century. The Tariff Act of July 4, 1789, and the Duties on Tonnage statute of July 20, together mandated a revitalized national Customs Service. On July 31 an act was passed establishing 59 customs districts in 11 States; 20 of these districts were in Massachusetts, 12 in Virginia and nine in Maryland. No other state claimed more than four districts, although the Port of New York would quickly emerge as the largest district by a wide margin, an edge that would grow with the passing decades.

By 1792 the service functioned in 14 states, claiming 146 officers and 332 subordinates; in size it far surpassed any other civil establishment in the new government. Officers with executive authority included collectors, naval officers, surveyors and civilian masters (captains) of revenue cutters. Despite the confusing title, the naval officer was really a deputy collector and always a civil appointee. He was appointed with the informal intent both to backstop the collector in large ports and to referee the maintenance of fiscal integrity. Subordinate positions, in practice usually filled at the discretion of the collector, included revenue cutter crews, inspectors (still known popularly as tidewaiters and landwaiters), gaugers, weighers, measurers and boatmen. Only the largest ports were served by a full complement of officers. Medium-sized ports usually functioned without a naval officer and a cutter. Smaller ports were administered only by a collector, and some of the smallest only by a surveyor of customs. By the time the Federalist era ended in 1801, however, the number of subordinate employees in the 71 ports of entry had risen to 944, although the roster of officers had not increased much.³

³ "List of Civil Officers of the United States . . . October 1, 1792, and Roll of the Officers, Civil, Military, and Naval of the United States [1801], *American State Papers, Miscellaneous: Documents, Legislative and Executive of the Congress of the United States*, Walter Lowrie and Walter S.

The officers at the top of the service in the states exerted great political leverage because of their prestige and income, and because of the deference paid them. But their major source of power, especially for the collectors, derived from a more mundane source, namely, their authority to fill new positions in a rapidly expanding department. These officers had handsome salaries and fees, continued without exception to reside in their native communities, and were not barred from politics or business either by law or mores. All in all, the Customs Service constituted the best official reservoir for political cadre in this decade of its inception. The future Secretary of War in the Adams administration, James McHenry, was not telling Alexander Hamilton anything the latter did not already know when he wrote in 1792 that the collector's office "possesses vast influence, and ought not to be given away lightly." ⁴

Several contemporary descriptions of the collector's office bear out this sense of its importance on the wider scenes of American life. Baltimore Customs Collector James McCulloch ably summarized the unofficial role his office afforded when he wrote that the collectors "must be considered as watchmen for the community, reporters to the government, promulgators of the law." ⁵ Josiah Quincy described the customs officer at Warren, Rhode Island, in 1801 as running the entire circus in town. He "was at once the principal village trader, its customs house officer, Postmaster and printer." ⁶

On occasion, a collector might make ad hoc national policy from his customhouse, as did Baltimore's James McCulloch,

Franklin, eds., 2 vols., (Washington, D.C.: 1834), vol. I, pp. 57-68; vol. II, pp. 260-319. Of the first federal officers appointed to the Customs Service, 45 percent were incumbents of comparable state ports during the Confederation.

⁴James McHenry to Alexander Hamilton, September 30, 1792, *The Papers of Alexander Hamilton*, Harold C. Syrett, ed., 24 vols. (New York: 1961-1976), vol. XII, p. 510.

⁵Senate Document 27, 15th Cong., 2d Sess., June 10, 1818, *Annals of Congress*, pp. 6-7.

⁶Josiah Quincy's Journal, Massachusetts Historical Society *Proceedings*, 2d Series, vol. IV (1887-1889), pp. 124-25.

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who witnessed the emergence of several Latin American republics early in the 19th century. John Quincy Adams long suspected McCulloch of complicity in allowing vessels to clear customs in order to engage in slave trading or piracy. After investigation, however, Treasury Secretary William H. Crawford concluded that McCulloch was honest but so caught up emotionally in the cause of these new nations that he was permitting vessels to clear for South America with arms for the rebels against Spanish rule. Obviously American neutrality was being violated at Baltimore, but because unofficial American sympathies lay with those rebels, successive U.S. administrations turned a blind eye and McCulloch retained his post until his death.⁷

Not every customs officer was so involved in matters of state as McCulloch, but certainly in the formative years of the service these officers exercised enormous local authority, not merely in administrative matters related to the collection of the revenue, but in the political and social life of their towns and cities as well.

NEW ENGLAND: CUSTOMS IN THE LIFE AND POLITICS OF THE COMMUNITY

Boston remained the busiest port in America during most of the 1790's. The Customs Service, in disrepute everywhere as a result of the Revolution, was nowhere held in less esteem than in "the land of Cod and God." President Washington knew this and made an astute choice in naming Benjamin Lincoln collector in Boston in 1789; if anyone had the stature to restore the service's image, it was the former Continental Army general. As Secretary for War in the Confederation government, Lincoln had

⁷ John Quincy Adams to James Monroe, August 2, 1820, *Writings of John Quincy Adams*, Worthington C. Ford, ed., 7 vols. (New York: 1913-1917), vol. VII, p. 59; *Memoirs of John Quincy Adams*, Charles Francis Adams, ed., 12 vols. (Philadelphia: 1874-1877), entry for June 19, 1820, vol. V, p. 154.

led the troops that put down Shays' Rebellion in 1786, to the delight of Boston's merchant community. After ratification of the Constitution, he emerged as a moderate force in the complex configuration of Massachusetts politics. But his own bleak financial situation made the customs appointment a welcome one for the portly military figure. He quickly became an important confidant of both the President and the Secretary of the Treasury, Alexander Hamilton. Active in Massachusetts politics while in office, he publicly preached that Hamilton's nationalist economic program was vital "for the political salvation of this country."⁸

Lincoln presided over about 50 officers and employees, who represented a surprising range of social and economic diversity within the Boston community. That the customhouse mirrored the local society of which it was a part helps to explain why it quickly gained the confidence of a public jaded by its Revolutionary experience. Only five of the 50 could be described as gentry (18th-century upper class). Two of these, Ebenezer Storer and William Shattuck, customs inspector and weigher respectively, were merchants much reduced in circumstances at the time of their appointments early in the decade. By 1798, however,

⁸There are many secondary accounts of Benjamin Lincoln's career, but the best by far is that contained in Clifford Shipton, *Sibley's Harvard Graduates*, 16 vols. (Boston: 1873-1972), vol. XII, pp. 416-38. See also the Benjamin Lincoln-Theodore Sedgwick correspondence, 1789-1800; Jonathan Jackson to Lincoln, August 1, 1789, April 3, 1791; Tobias Lear to Lincoln, April 8, 1791; William Jackson to Lincoln, March 15, 1799, and passim, Benjamin Lincoln Papers (Massachusetts Historical Society); Lincoln to George Washington, August 13, 1789, Applications for Office Under President Washington, Series VII, George Washington Papers, Library of Congress, vol. IV, and vols. VI, XVIII, XXV, passim; George Washington to Lincoln, August 14, 1791, *The Writings of George Washington*, John C. Fitzpatrick, ed., 39 vols. (Washington, D.C.: 1931-34), vol. XXXI, pp. 335-36, and passim; Lincoln to Alexander Hamilton, February 16 and December 4, 1790, Stephen Higginson to Hamilton, August 24, 1793, *The Papers of Alexander Hamilton*, Harold C. Syrett, ed., vol. VI, pp. 268-69; vol. VII, pp. 196-98; vol. XV, pp. 273-76, respectively, and passim; Stephen Higginson to Timothy Pickering, January 12, 1800, "Letters of S. Higginson," John Franklin Jameson, ed., *American Historical Association Annual Report*, 1896 (Washington, D.C.: 1896), p. 835.

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aided by extensive fees in addition to their salaries in a busy port, each had been able to buy a house and to a degree restore himself economically and socially to a status close to the one that his family had enjoyed before the Revolution.

Eight other employees who could be identified were drawn directly from the artisan and laboring class. Most of them were measurers, weighers, or gaugers of customs who worked part-time for fees and small salaries. The rest of the time they were able to pursue their respective trades in town. Several had been junior officers in the Continental Army. Joseph Pico and Joseph Spear were coopers (barrelmakers), Peter Dolliver kept a small shop, Hezekiah Welch was a shipwright, and Benjamin Eaton was a small-time distiller. The Customs Service appointments they enjoyed significantly increased their status in the city and provided them not only with social standing but also with comfortable margins of economic security in a precarious society. The changed character of the Boston customhouse in the 1790's, as compared with the 1770's, was most evident in the fact that now the customs personnel remained an integral part of the society from which they derived and were trusted by the merchant fraternity of the town.⁹

An examination of the much smaller Massachusetts customhouse at Newburyport—a tiny hamlet on the rocky and forbidding coast of northern Essex County—reveals much the same phenomenon: Customs employees drawn from the ranks of the town's elite and working classes cemented a close social affinity between customs operations and the merchant community. But the political infighting around lucrative customs appointments could often become brutal, as it did in this home of the "codfish aristocracy."

The Newburyport customhouse was, from its establishment in 1789, enmeshed in the party politics of the Federalist decade. The political turmoil began when the dominant Federalist party

⁹ *The Boston Directory, 1789* (Boston: 1789); *United States Direct Tax of 1798*, 22d Report of the Record Commissioners of the City of Boston (Boston: 1890).

prevailed on Hamilton to appoint Stephen Cross collector. The Federalists assumed Cross to be one of their own politically, but he proved to be a strong supporter of Hamilton's archrival, Thomas Jefferson. Given the local independence of the collector, his control over the lower appointments in the customhouse, and thus his considerable political leverage, which Cross decided to use for the Jeffersonian cause, the Newburyport Federalists quickly realized their mistake and decided that Cross had to go.

Still, Cross was a formidable local figure in Newburyport. A member of a well-to-do and highly respected local clan, he and his brother were third-generation operators of the family ship-building industry. That firm had built two frigates for the Continental Navy during the war. Stephen had also held several local offices during the Revolution. He was for many years (including his tenure as collector) a member of the Massachusetts state legislature, and highly regarded by many of his fellow townsmen.

His removal by Hamilton for "misconduct" in 1792 was tainted by politics. Cross, whom Jefferson returned to office in 1802, claimed that he had been dismissed for political reasons, and the record bears him out. None of his repeated requests to Hamilton for the specific instances of his misconduct were ever satisfactorily answered. A final demand by Cross for a full investigation into the nature of his misconduct was also turned down, yet he was neither prosecuted nor sued for recovery of public monies or violations of federal law, the usual procedure in this period for customs officials charged with fiscal misconduct. Cross himself claimed that he "gave Satisfaction to all [in his office] until Mr. Hamilton . . . thought it necessary to destroy [him] by obtaining his removal and disgrace." ¹⁰

¹⁰For the Cross family in the life of Newburyport, the views of the local Federalist party and the national administration in dealing with Stephen Cross, and the politics, background, and claims of Cross, see Leonard Labaree, *Patriots and Partisans: the Merchants of Newburyport, 1764-1815* (Cambridge, Mass.: 1962), pp. 140-42, 210; George Cabot to Oliver Wolcott, Jr., October 21, 1805, in *Life and Letters of George Cabot*, Henry Cabot Lodge, ed. (Boston: 1877), p. 328; Alexander Hamilton to George Washing-

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Edward Wigglesworth, the collector named to replace Cross in 1792, seemed a safer bet. In addition to his credentials as a Federalist, Wigglesworth was a Harvard graduate, the son of a Puritan clergyman, and a member of an old Newburyport family. Politically he was active in the Society of the Cincinnati, the fraternity of ex-officers of the Continental Army, in which he had served as a colonel. In short, his pedigree was impeccable.

But his management of the customhouse was intolerable. His first official act was to dismiss Ralph Cross, Stephen's Republican brother and a weigher and gauger of customs. The irony in this soon became apparent, as things went downhill from there. Wigglesworth was accused of "poor arithmetick" in customs higher mathematics in 1795 and was himself removed. He immediately declared bankruptcy and thus avoided federal prosecution for recovery of embezzled customs receipts, although he did forfeit his bond.

The third collector of the decade, Dudley Tyng, was one the Federalist party in town could live with, but he in turn was removed by Jefferson in 1802, in order to restore Stephen Cross to office.¹¹ The game of political musical chairs played by both Federalists and Jeffersonians in the first years of the new U.S. Customs Service was symptomatic of systemwide problems. In fact, the Customs Service was subject to a dangerous politiciza-

ton, April 23, 1792, in *The Papers of Hamilton*, Syrett, ed., vol. XI, p. 331; Benjamin Goodhue to Washington, June 30, and July 22, 1789, Applications for Office Under President Washington, Series VII, George Washington Papers, vol. XII, Library of Congress; Theophilus Parsons to John Adams, July 8, 1794, in *ibid.*, vol. XXII; Stephen Cross to Levi Lincoln, September 20, 1802, Stephen Cross entry, Letters of Application and Recommendation During the Administration of Thomas Jefferson, Record Group (RG) 59, National Archives.

¹¹For Ralph Cross, see George Cabot to Oliver Wolcott, Jr., October 21, 1801, in *Life and Letters of George Cabot*, Lodge, ed., p. 328. For Edward Wigglesworth, see Shipton, *Sibley's Harvard Graduates*, vol. XV, pp. 129-33. For Dudley Tyng, see "S.H." [Stephen Higginson] to George Cabot, June 19, 1795, in Applications for Office Under President Washington, Series VII, George Washington Papers, vol. XXVI, Library of Congress; and Henry Warren to Thomas Jefferson, November 10, 1802, Harry Warren entry, Letters of Application and Recommendation During the Administration of Thomas Jefferson, RG 59, National Archives.

tion from its early days, as is illustrated by events in Portsmouth, New Hampshire.

By the end of the Revolution, Portsmouth was a bustling shipbuilding town that served as the chief port of entry for the developing agricultural hinterland on the Vermont and New Hampshire frontiers. Even though most imports destined for northern New England came through Boston, the needs of local agriculture and shipbuilding ensured that Portsmouth would enjoy a significant coasting trade that required close supervision.

Federalist Joseph Whipple was named the first Federal collector at Portsmouth. He had been a firm and important supporter of constitutional reform in a divided state. As late as 1792 Whipple wrote Alexander Hamilton of his "peculiar Satisfaction with . . . the effects of the Federal government," adding that its salutary impact "has been amply verified in the administration of the department [Treasury] under which I act." Although the Treasury Secretary occasionally chided Whipple for laxity in enforcing the customs laws, by and large he extended to the collector a discretionary local authority that was characteristic of Hamiltonian administration. Like all collectors, Whipple named his own subordinates, virtually free of any dictates from the Federal administration.¹²

By late 1794, however, Whipple, like Stephen Cross, had become disenchanted with the Washington administration—and the politics of Alexander Hamilton, in particular—and deserted the Federalist party for the budding Jeffersonian Republicans. By 1798, Whipple had become zealously Jeffersonian. That year an embattled John Adams removed not only Whipple but most other New

¹²For Joseph Whipple's early Federal appointment and politics, see John Langdon to George Washington, July 19, 1789, Applications for Office Under President Washington, Series VII, George Washington Papers (Manuscript Division, Library of Congress), vol. XVII; Joseph Whipple to Alexander Hamilton, October 9, 1790; Hamilton to George Washington, July 26, 1792; Whipple to Hamilton, October 17, 1792, in *Papers of Alexander Hamilton*, Syrett, ed., vol. VII, pp. 104-05; vol. XII, pp. 117, 588-89, respectively; and William Plumer to Jeremiah Smith, December 23, 1794, William Plumer Letterbook, William Plumer Papers, Library of Congress.

Hampshire federal appointees for changing their politics. These included, in addition to Whipple, some 20 of 23 subordinate employees. The Portsmouth customhouse was swept clean of all those whom President Adams regarded as political turncoats.¹³

Adams found himself under considerable local pressure to clean house. A Federalist merchant, for example, inquired of the President "how it happens that a man of his [Whipple's] Character, especially his political Character, should remain so long in the most lucrative office in the State." It was, he believed, "a wonder to *every* Merchant here, for I suppose every one esteems him one of the most inveterate Jackobins in the United States."¹⁴ The captain of a customs revenue cutter, Hopley Yeaton, was the subject of similar tirades.¹⁵

The barrage of complaints had its desired effect. The wheels of government turned quickly in 1798, and in July, Whipple and

¹³For the changeover of customs personnel at Portsmouth between 1795 and 1800, see "List of Civil Officers of the United States . . . October 1, 1792;" and "Roll of Officers, Civil, Military, and Naval of the United States [1801]," *American State Papers, Miscellaneous: Documents, Legislative and Executive of the Congress of the United States*, Walter Lowrie and Walter S. Franklin, eds., vol. I, pp. 60-66, and vol. II, p. 261. A comparison of the roster of employees circa 1792 with that of 1800 shows that an uncharacteristic wholesale turnover in the lower echelons of Customs in Portsmouth had taken place. See also Jeremiah Smith to Oliver Wolcott, Jr., June 14, 1798, Jeremiah Smith entry, Letters of Application and Recommendation During the Administration of John Adams, General Records of the Department of State, Record Group 59, National Archives; and William Plumer to Jeremiah Smith, June 30, 1795, and April 19, 1796, in William Plumer Letterbook, William Plumer Papers, Library of Congress.

¹⁴William Plumer to Oliver Wolcott, Jr., June 8, 1798, and Eliphalet Ladd to Wolcott, June 15, 1798, Joseph Whipple entry, Jeremiah Smith to Wolcott, June 14, 1798, Jeremiah Smith entry, in Letters of Application and Recommendation During the Administration of John Adams, Record Group 59, National Archives.

¹⁵*Ibid.* See also Hopley Yeaton to George Washington, December 11, 1789, Applications for Office Under President Washington, Series VII, George Washington Papers, vol. XXXII, Library of Congress; Hopley Yeaton Petition to Thomas Jefferson, August 1, 1801, in Albert Gallatin Papers, New York Historical Society; John Langdon to Albert Gallatin August 6, 1802, in Hopley Yeaton entry, Letters of Application and Recommendation During the Administration of Thomas Jefferson, General Records of the Department of State, Record Group 59, National Archives.

Yeaton were removed from office. Within the year all but three of the remaining officers and employees had been fired, including the crew of the revenue cutter. All were replaced by reliable Federalist party supporters. A number of influential Federalists were justifiably alarmed at these obvious wholesale removals for political reasons. One of those who wrote Adams questioning his actions was Boston Customs Collector Benjamin Lincoln. Adams replied that "when I came into office, it was my determination to make as few removals as possible—not one from personal motives, not one from party considerations." But, Adams continued, "the representations to me of the daily language of several [customs] officers at Portsmouth, were so evincive of aversion, if not hostility, to the national Constitution and Government, that I could not avoid making some changes. Mr. Whipple is represented as very artful in imputing individual misfortunes to measures of administration, and his whole influence to have been employed against the government." The beleaguered President concluded that "if the officers of the government will not support it, who will?"¹⁶

The inevitable end to this episode comes close to anticlimax. Soon after Jefferson's inauguration as President, Whipple and Yeaton successfully petitioned Jefferson for reinstatement. For the second time in three years, the Portsmouth customhouse was cleared, as Whipple removed all 20 Federalists named by Adams in 1798, with the knowledge and approval of both Jefferson and the new Treasury Secretary, Albert Gallatin.¹⁷

Events in Newburyport and Portsmouth clearly introduced a vicious circle of removals in the Customs Service, based on a

¹⁶ John Adams to Benjamin Lincoln, March 10, 1800, in Mellen Chamberlain Autograph Collection, Boston Public Library.

¹⁷ "Roll of the Officers, Civil, Military and Naval of the United States [1801]," *American State Papers, Miscellaneous*, vol. II, pp. 260–319; Thomas Jefferson's "Anas," March 18, 1801, *The Works Of Thomas Jefferson*, Paul L. Ford, ed. (12 vols., New York: 1904–05), vol. I, p. 363; Hopley Yeaton petition to Jefferson, August 1, 1801, enclosed with Joseph Whipple to Albert Gallatin, October 27, 1801, *Microfilm Edition of the Papers of Albert Gallatin*, Carl E. Prince, ed., 45 rolls (Philadelphia: 1970).

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singular test of political loyalty; this was a reality of party confrontation in the new nation.

TWO MID-ATLANTIC PORTS: CUSTOMS IN PHILADELPHIA AND BALTIMORE

In Philadelphia as in New England, the port's customs officers and employees were aggressively political. Sharp Delany, a holdover from the Confederation era and a strong supporter first of the Constitution and then of the Federalist party, was the first customs collector. Unlike the New England collectors, the chief officers in Philadelphia and Baltimore were self-made men. Delany was an Irish immigrant who had opened an apothecary shop before the Revolution. In a city of unusual ethnic and religious diversity, he was able to carve out for himself a successful political career, holding several offices and a seat in the Pennsylvania legislature during the 1780's. His political visibility notwithstanding, he barely scraped along financially, depending increasingly on his customs income to maintain an expensive lifestyle. Under extreme financial pressure, he embezzled Federal revenue to the tune of at least \$86,000 and was forced to resign in 1798.

Delany never repaid the money, and he was not sued by the government. In contrast, New York City Collector John Lamb, a Jeffersonian who was also removed in 1798, was sued, even though it was his deputy who had embezzled the money in New York.¹⁸ The

¹⁸ For Sharp Delany, see Delany to Alexander Hamilton, February 15, 23, 1790, and passim, in *Papers of Hamilton*, Syrett, ed., vol. VI, pp. 226, 275-76 and passim; Richard Peters to George Washington, April 22, 1789, Sharp Delany to Washington, April 20, 1789, in Applications for Office Under President Washington, Series VII, George Washington Papers, vol. VIII, Library of Congress; and Donald H. Stewart, "The Press and Political Corruption during the Federalist Administrations," *Political Science Quarterly*, vol. LXVII (1952), p. 441.

For the circumstances of Lamb's removal, see Jonathan Burrall entry, passim, Letters of Application and Recommendation During the Administration of John Adams, General Records of the Department of State, RG 59, National Archives.

difference in treatment of Delany and Lamb underscores the role politics played in customhouses everywhere in this era.

Politics is even more evident in the career of William McPherson, surveyor of the Port of Philadelphia until 1793, when he was promoted to naval officer. McPherson was a military man first and foremost. A native Philadelphian, he accompanied his parents to England as a young man and accepted a commission in the British army. When the Revolution broke out, however, he resigned, returned to America, and joined the Continental Army, rising to the rank of colonel in the course of the war. McPherson was active after the war in the Society of the Cincinnati—as were so many other customs officers who held rank in the Revolution—and this affiliation launched him into politics as a supporter of the nationalist interest in the Confederation. He remained a Federalist throughout the 1790's, and predictably, that commitment was, like his customs appointment, harnessed to the interests of that party.

Throughout the Federalist decade, he commanded “McPherson’s Blues,” a crack militia regiment in Philadelphia that was understood to be the best cavalry unit in the new nation. A leisurely customs schedule provided McPherson with more than \$4,000 per year and the time to indulge his military interests. The contemporary description of “McPherson’s Blues” as a “Federalist Military Organization” was rendered accurate when George Washington called on it to help suppress the Whiskey Rebellion of 1794. In 1798, President John Adams appointed McPherson one of the generals of the new Provisional Army being raised to meet the possibility of a war with France over the XYZ affair. The Blues were also called into service to quash John Fries’ anti-direct-tax insurrection in Pennsylvania a year later. Little wonder that Jefferson considered McPherson a prime target for removal after the election of 1800.¹⁹

¹⁹For William McPherson, see McPherson to George Washington, August 5, 1789, and October 23, 1793, in *Applications for Office Under President Washington*, Series VII, *George Washington Papers*, vol. XIX, Library of Congress. See also Thomas Cooper et al. to Thomas Jefferson,

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Such strong political leadership at the top meant great pressures to conform down below. One who did not conform was Alexander Boyd, an inspector of customs and a Jeffersonian Republican whom Delany removed in 1797. "As soon as party spirit began to run high," he later wrote Jefferson, "my known Republican principles rendered me odious to the Collector and Surveyor of the port." He stepped over the line, he acknowledged, when "I dared to exercise my right openly as a freeman in an important election in this city. I was abruptly dismissed from office with no other reason assigned than that I had voted for a man Esteemed an Enemy to the Administration."

This refrain became all too familiar during the first century of customs operations in the United States. A second Republican inspector, Jonas Simonds, hung onto his post by agreeing to abstain from all partisan activities; but his political beliefs, he claimed, "left me no room to hope or expect preferment, and in that humble station [tide-waiter] I have been left." As Simonds so succinctly phrased it, he was led to believe that Republicanism "was a great crime at the customhouse."²⁰

May 23, 1801, Tench Coxe to Jefferson, June 25, 1801, and William Henderson and Tench Coxe entries in Letters of Application and Recommendation During the Administration of Thomas Jefferson, RG 59, National Archives; *Extracts from the Diary of Jacob Hiltzheimer of Philadelphia, 1765-1798*, Jacob Cox Parsons, ed. (Philadelphia: 1893), pp. 147, 165; *General Washington's Correspondence Concerning the Society of the Cincinnati*, George Hume ed. (Baltimore: 1941), p. 382; *The Diaries of George Washington, 1748-1799*, John C. Fitzpatrick, ed. 4 vols. (Boston: 1925), vol. IV, p. 217n; and John Carroll and Mary Ashworth, *George Washington: First in Peace* (New York: 1957), pp. 208n, 227, 575. See also William H. Egle, "The Federal Constitution of 1787: Biographical Sketches of the Members of the Pennsylvania Convention," *Pennsylvania Magazine of History and Biography*, vols. X-XI (1886-87), pp. 250-52; *Directory of the City of Philadelphia* (Philadelphia: 1805, 1807).

²⁰For Jonas Simonds, see Simonds to Thomas Jefferson, April 18, 1801, and Thomas Leiper to Jefferson, January 26, 1806, Jonas Simonds entry, Letters of Application and Recommendation During the Administration of Thomas Jefferson, RG 59, National Archives.

For Alexander Boyd, see Boyd to Jefferson, March 17, 1801, Alexander Boyd entry, *ibid.* As Boyd was an innkeeper in Philadelphia, his house had served as an informal political headquarters for anti-Federalist delegates to the Pennsylvania Ratifying Convention in 1788. He had worked part-time at

Because of their heavy political involvement, the Philadelphia customs officers were only part-time operatives, who left much of the business to deputies. Inspector John Graff, whose rank was no higher than that of the tidewaiters, actually ran the many day-to-day operations at the Philadelphia customhouse. In the Philadelphia city directory, in fact, he was listed as "deputy collector," even though the federal government carried no such job description on its books in the Federalist decade.

Generally speaking, the unassuming Graff was an excellent administrator. He was uninvolved in Philadelphia party contentions, and was clearly willing to shoulder responsibility while his betters reaped the fees deriving from his labors. "Mr. Graff has been in the Execution of his office," one observer wrote, "free from a political or commercial partiality." Thus he served both Federalists and Republicans alike as the political winds shifted after 1800. For nearly 20 years he "chiefly conducted the business of the office." In many ways Graff's career implies much about both the political orientation and the freedom from duties of many high-level posts within the Customs Service in its initial decade.²¹

The other employees of the customhouse represented a cross section of Philadelphia's working class. There were four former seamen, two bricklayers, a cartman, a fruiterer and a silversmith. All were able to pursue their trades, because they worked only part time at the port for small salaries and sometimes fairly large

the customhouse through most of the Confederation and thus had been kept on in the transition from state to federal customs control. John B. McMaster and Frederick D. Stone, *Pennsylvania and the Federal Constitution, 1787-1788* (Lancaster: 1888), pp. 3-4, 13, 67, 204.

²¹ John Graff to George Washington, October 21, 1792, November 14, 1793, and Sharp Delany to Washington, November 17, 1793, in Applications for Office Under President Washington, Series VII, George Washington Papers, vol. XII, Library of Congress; Peter Muhlenberg to Thomas Jefferson, August 20, 1807, in Peter Muhlenberg entry, and Samuel Emery to James Madison, September 17, 1807, Muhlenberg to Albert Gallatin, September 26, 1806, and John Graff to Jefferson, September 28, 1807, in John Graff entry, Letters of Application and Recommendation During the Administration of Thomas Jefferson, R.G. 59, National Archives; *Directory of the City of Philadelphia*, 1805, 1806.

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fees. They earned anywhere from \$200 to perhaps \$800 a year. Each owed his appointment to the steadfastness of his politics.²²

As in most American ports, the Customs Service in Baltimore was a resting place for veterans of the Continental Army. George Washington's natural predilection was to name those who had "proven themselves in '76." The collector during the Confederation was Otho Holland Williams, who had served throughout the war and ended his military career as a brigadier general. A strong supporter of constitutional reform, he was a natural to be continued in his post under the new federal government. Although most collectors named by the Federalist administration in the 1790's were highly placed gentry, Williams, like Sharp Delany, began life in obscurity and poverty.

Born in 1749 and orphaned while in his teens, Williams had to rear his six younger siblings. He apprenticed himself as a clerk to a merchant house for seven years, to earn both money and an education. In a period of social mobility, he used his native ability to work his way into the firm and make a small place for himself in pre-Revolutionary Maryland society. An early supporter of independence, he landed a commission in the new Continental Army and, again, through ability rather than preferment, rose rapidly through the ranks. With the return of peace in 1783, a grateful Maryland legislature named him Baltimore's collector of customs. He quickly became one of the state's leading constitutional reformers and eventually a Federalist.²³

²²The Federalists described included John Sharp, Jacob Bunner, Isaac Roach, William Milnor, William Gray, William Dunton, Burgess Ball, David Rose, William King, George Hofner, and Lewis Bitting. A wide variety of sources were consulted. In general, the *Directory of the City of Philadelphia* for 1805 and 1807, and Applications for Office Under President Washington, Series VII, George Washington Papers, Library of Congress, were the most informative.

²³For Williams's background, see *Calendar of the General Otho Holland Williams Papers*, Elizabeth Merritt, ed. (Baltimore: 1940), introduction and passim. See particularly Teresa Williams Davis to Otho Williams, March 1794, and Otho Williams to Elie Williams, March 1794, pp. 330-31; James McHenry to Alexander Hamilton, May 3, 1791, in *Papers of Alexander Hamilton*, Syrett, ed., vol. VII, pp. 321-22; *George Washington's Correspondence Concerning the Society of the Cincinnati*, Hume, ed., pp. 458-59.

Otho Williams had stormy dealings with his superior in the government, Treasury Secretary Alexander Hamilton. The two shared similar backgrounds and temperaments and had served together in the war. The Baltimore collector was an experienced and thoughtful customs officer, and the new Administration sought his counsel as it drafted enabling legislation for the service in 1789. Several of Williams' suggestions found their way into the bill. Hamilton knew Williams to be both a person with good judgment and an important political figure in his community, but one extremely sensitive to the smallest snub, real or fancied. Williams' reactions to Hamilton can only be described as ambivalent. While writing a series of newspaper essays in 1790 supporting Hamilton's economic program, Williams confided to a friend that "Hamilton's abilities are greater than the perfection of his plans." Yet when Hamilton expressed dismay after receiving one of Williams' biting letters of criticism, Williams wrote his father-in-law that he was "sorry the Secretary feels hurt but I do not see the necessity of another letter to the paper [lauding Hamilton] to soothe him."²⁴

A pair of incidents underlined their complex relationship, which might best be left to a Freudian analyst. The first instance concerned Williams and Robert Ballard, the surveyor of customs at Baltimore. Williams initially recommended Ballard for the post in 1789, describing him as one who "uniformly acted with the friends of order and good government" (a euphemism for Federalism). Nevertheless, by 1792, tensions between the two threatened to disrupt Baltimore operations. Part of the falling out resulted from Williams' rapidly declining health, which left "more and more of the work of Williams' office falling on his deputies." Ballard complained frequently to Hamilton and others about the extra burden this placed on his shoulders. At

²⁴Otho H. Williams to David Humphries, May 12, 1789, Applications for Office Under President Washington, Series VII, George Washington Papers, vol. V; Williams to Washington, April 18, May 12, and July 5 and 14, 1789, in *ibid.*, vol. XXX, Library of Congress; *Papers of Hamilton*, Syrett, ed., vols. XI and XII, *passim*; *Calendar of the Williams Papers*, Merritt, ed., *passim*.

the same time, several subordinate custom inspectors complained that Ballard, who was not properly their superior, was tyrannizing them.

When Hamilton inquired about the circumstances of both Ballard's and the tidewaiters' complaints, Williams took his letter as a personal rebuke, blasted Hamilton in his response, and threatened to resign. Uncharacteristically, Hamilton by return mail apologized for any offense, adding that he had no desire to place Williams "in a situation to be the instrument of rigorous measures auxiliary to such arbitrary or oppressive conduct" as that of which Ballard appeared to be guilty. The Secretary added that the surveyor was "*in all cases* subject to the controul of the Collector," as, of course, were the inspectors. Hamilton ended his unusually placatory letter by promising to back Williams to the hilt without any further investigation of Ballard's claims: "Nothing will be wanting on my part to give energy to the representation which you shall make," he wrote, signing his letter "with undiminished consideration and esteem." ²⁵

The second confrontation also involved open disrespect on Williams' part and a wholly uncharacteristic retreat by Hamilton from a showdown with a subordinate. At Otho Williams' urging, Hamilton in 1791 awarded to Elie Williams (Otho's brother and a partner in the struggling new merchant firm of Eliot and Williams) a contract to supply American troops in the West. The contract was palpably never honored; deliveries were late or never arrived at all,

²⁵For indications of the wide-ranging, complex relationship between Williams and Hamilton, see Otho H. Williams to Alexander Hamilton, March 5 and April 5, 1792, Hamilton to Williams, June 9, 1792, *Papers of Hamilton*, Syrett, ed., vols. X and XI; Hamilton to Williams, March 28, 1792, *Calendar of the General Otho Holland Williams Papers*, Merritt, ed., pp. 255-56 and *passim*.

For the Ballard controversy, see Williams to George Washington, undated (1789), Applications for Office Under President Washington, Series VII, George Washington Papers, vol. XXX, Library of Congress; Hamilton to Williams, June 18, 1792, 2nd Williams to Hamilton, June 28, 1792 in *Papers of Hamilton*, Syrett, ed., vol. XI, pp. 601-05; Williams to Hamilton, July 27, 1792, Hamilton to Williams, July 19 and August 14, 1792, in *ibid.*, vol. XII, pp. 119-22, 46-55, 204-05, respectively.

accounts were badly kept, and Williams' brother proved totally unreliable, perhaps even dishonest. Although Hamilton from time to time was occupied with the problems the younger Williams caused, the Secretary did not terminate the arrangement and even refrained from much overt criticism for nearly two years. But even that restraint pained the older brother and made him sulk. The collector made clear that he felt any fault lay with Hamilton and the government and not his brother. Again with uncharacteristic forbearance, the Secretary repeatedly backed away from an open clash with his subordinate, ending the costly contract only after Williams' death.²⁶

CUSTOMS AND COMMUNITY: VIRGINIA

Alexandria was one of the two major ports in Virginia at the time the Republic was founded. In a state that leaned toward the Jeffersonian Republican party (it was, after all, home to the Virginia dynasty of Jefferson, Madison and Monroe), the customhouses in Alexandria and Norfolk were strongholds of the Federalist party; the party in power controlled the customhouse, south as well as north of the Mason-Dixon line.

Three different collectors headed the federal establishment in Alexandria in the 1790's: Charles Lee from 1789 to 1795, John Fitzgerald from 1795 to 1797, and Charles Simms thereafter. All three were able and politically active representatives of the commonwealth's gentry who possessed unusually strong personal ties to the Federalist administration in Philadelphia. Each understood that he owed his appointment to his revolutionary service and support of the Federalist cause—as nationalist in the Confederation and a party man in the Federalist decade. They understood, too, that the duties of office would encroach but little on their time.

²⁶For the dispute involving Elie Williams, see Otho H. Williams to William Smith, June 26, 1791, and Elie Williams to Otho H. Williams, January 23, 1794, and *passim*, *Calendar of the General Otho Holland Williams Papers*, Merritt, ed., pp. 242, 312, and *passim*.

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Charles Lee was named collector of Customs at Alexandria during the Revolution. By 1790, after he had gained reappointment via the federal government, the office was producing an income of more than \$1,000 annually and employed some 15 subordinates. Lee was described as one of “the second-rate followers” of Hamilton nationally and was a member of the “Richmond faction” of the Federalist party. One of his brothers (Richard Bland Lee) was a member of Congress, and another (Light Horse Harry) was for a time governor of the state. Charles Lee practiced law in addition to collecting the customs. In 1795 he became Attorney General of the United States in Washington’s second administration, and stayed on in John Adams’ cabinet.²⁷

Surveyor Samuel Hanson, the second officer of the port, complained to President Washington “that Lee is absent for most of the year,” leaving the day-to-day business in the hands of a deputy. Nearly a decade later, when Charles Simms was about to leave the customhouse, it was still described as “a perfect sinecure, the duties being performed by a Deputy, while he [Simms] attends his profession as a lawyer.” Yet the office retained its political importance. “It is impossible,” a Virginia Jeffersonian complained, “to estimate the influence which may be exercised in the collection of large sums of money payable for customs duties in a commercial town.”²⁸

²⁷ For Lee’s extensive political activity, see Charles Lee to James Iredell, September 20, 1798, James Iredell Papers, Perkins Library, Duke University; Oliver Wolcott, Jr., to Fisher Ames, December 29, 1799, in *Memoirs of the Administrations of Washington and John Adams Edited from the Papers of Oliver Wolcott, Secretary of the Treasury*, George Gibbs, ed. (New York: 1846), vol. II, pp. 313–15; Charles Lee to George Washington, December 27, 1796, and Washington to Lee, December 27, 1796, in *The Writings of George Washington*, Fitzpatrick, ed., vol. XXXV, pp. 349–50; *Dictionary of American Biography*, vol. XI, pp. 101–02; and John Carroll and Mary Ashworth, *George Washington: First in Peace* (New York, 1957), 276n.

²⁸ Alexander Hamilton to Charles Lee, January 18, 1792, and Charles Lee to Hamilton, January 29, 1792, *The Papers of Hamilton*, Syrett, ed., vol. X, pp. 522–23n; Steven Thomson Mason et al. to Thomas Jefferson, March 3, 1804, in Charles Simms entry, Letters of Application and Recommendation During the Administration of Thomas Jefferson, Record Group 59, National Archives.

John Fitzgerald took over in Lee's slot at the customhouse in 1795. A physician, a member of the Virginia gentry, and a close friend of Washington's nephew, he had served as one of the President's aides during the Revolution. He owed his appointment directly to the President's intervention, only to find that the job was not to his taste.

The third collector in the decade was Charles Simms. Like Lee, he was a local attorney who maintained his practice while occupying federal office. Simms had property worth an estimated \$50,000 and a law practice that brought in \$2,500 per year, in addition to his customs salary and fees. Jeffersonians would later allege unfairly that Simms came into office a poor man and would leave it rich; while he did well as collector, he was already rich at the time of his appointment in 1797. A member of the House of Burgesses, an officer in the Virginia chapter of the Society of the Cincinnati, a delegate to the Virginia Ratifying Convention and an ex-army officer, he had all the social and political credentials he needed to keep the customhouse at the center of the Virginia political establishment.²⁹

Virginia also demonstrates how common nepotism, a problem in public life at any time, was in the early Customs Service. Both the relatively rigid social structure of the Old Dominion

²⁹For Fitzgerald, see John Fitzgerald to George Washington, April 5, 1793, in *Applications for Office Under President Washington*, Series VII, George Washington Papers, vol. XI, Library of Congress; George Washington to James Craik, April 9, 1793, and Washington to Fitzgerald, April 28 and June 3, 1793, *Writings of Washington*, Fitzpatrick ed., vol. XXXII, pp. 414, 438-39, 485-86, respectively; Washington to Fitzgerald, October 8, 9, 1793, in *ibid.*, vol. XXXIII, pp. 114-16; Alexander Hamilton to Fitzgerald, June 30, 1791, *Papers of Hamilton*, Syrett, ed., vol. VIII, p. 516; Fitzgerald to Hamilton, November 21, 1791, in *ibid.*, vol. IX, pp. 515-16. For Simms, see Archibald McLean to Thomas Jefferson, February 22, 1802, in Archibald McLean entry, *Letters of Application and Recommendation During the Administration of Thomas Jefferson*, R.G. 59, National Archives; Stevens T. Mason et al. to Jefferson, March 3, 1804, Thomas Ricketts to Jefferson, March 22, 1804, and A. Harrison to Richard Brent, March 22, 26, 1804, Cleon Moore entry, in *ibid.*; Hugh B. Grigsby, *The History of the Virginia Federal Convention of 1788* . . . 2 vols. (Richmond: 1980-91), vol. II, p. 373; Mary G. Powell, *The History of Old Alexandria, Virginia* (Richmond: 1928), pp. 259-60.

and the plenitude of small port towns in the Chesapeake and Potomac areas made Virginia highly susceptible to this official disease. Small ports were particularly subject to this affliction. Nepotism in the revenue service took two forms: the passage of an office from one relative to another and the appointment of young sons to well-paying sinecures.

There are several examples of outgoing officers passing on customs posts to close relatives. When Josiah Parker was elected to Congress, he resigned his customs post at Norfolk and neighboring Smithfield and succeeded in securing the latter for his brother Copeland, then only 20 years old. Similarly, at the tiny port of Dumfries on the Potomac River, Richard M. Scott, a local merchant and the collector of customs, having gained "fairly easy circumstances and wishing to retire" in 1795, successfully recommended his brother David for the post.³⁰

Despite the administration's announced fears of inherited office holding, it was also possible for an officer to pass his post on to his son. Federalist merchant Hudson Muse, long-time collector at the small Potomac port of Tappahannock, continued to engage in trade during his tenure in office. In 1793 and 1794, he used customs revenue to improve his financial reverses, and left himself unable "to meet the [United States] Treasurer's drafts on him." Although Washington promptly removed him from office for what the administration termed a "misdemeanor," Muse was neither prosecuted nor forced to make good the customs losses, not even by his bond. What makes the story even stranger, especially in light of Washington's and Hamilton's professions of public virtue, was that

³⁰ Josiah Parker to George Washington, May 11, 1792, William Taylor to Washington, May 20, 1792, and Edward Carrington to Alexander Hamilton, June 20, 1792, in Applications for Office Under President Washington, Series VII, George Washington Papers, vol. XXII, Library of Congress; William Lindsay to Hamilton, May 20, 1792, *Papers of Hamilton*, Syrett, ed., vol. XI, pp. 414-15; Charles Lee to George Washington, July 3, 1789, Richard Henry Lee to Washington, July 27, 1789, Richard Bland Lee to Washington, July 28, 1790, in Applications for Office Under President Washington, Series VII, George Washington Papers, vol. XVII, Library of Congress; Bushrod Washington to George Washington, March 19, 1789, Richard M. Scott to Washington, June 15, 1789, October 16, 1795, in *ibid.*, vol. XXV.

the Treasury Secretary and the President promptly appointed Hudson Muse's son Laurence to the collector's post and accepted transfer of the unencumbered bond from father to son. This happened even though the younger Muse, who had for several years served as his father's deputy in the federal service and was a junior partner in the family's merchant firm, could hardly have been unaware of what had been happening to the federal revenue collected at Tappahannock. But Laurence Muse was a member of the Virginia House of Burgesses in 1794, and both father and son were highly respected local Federalists.³¹

Two other collectors are known to have passed on offices to their sons in Virginia. When Jacob Wray retired at Hampton, opposite Norfolk at the mouth of the Chesapeake Bay, George Wray succeeded to the collector's post. Zachariah Rowland, a prominent merchant in Richmond, was named collector in that town in 1790. He retired in 1796 on condition that his son James be named to succeed him, despite the fact that the latter was only 21 years old.³²

Other relatives of highly placed Virginians also did well. Even President Washington, who repeatedly denounced nepotism and favoritism in granting offices³³ appointed several of

³¹ For the Muses, see *ibid.*, "A List of Persons who . . . Requested to be Recommended to the President . . . for Appointment," undated (1789), vol. IV; Samuel Griffin to Washington, undated (1789), vol. XIII; Hudson Muse to Washington, March 20, 1789, February 1, 1794, _____ to James Monroe, February 3, 1794, vol. XX; George W. Smith to Washington, February 4, 1794, vol. XXVI; and *The Letters and Papers of Edmund Pendleton, 1734-1803*, David J. Mays, ed., 2 vols. (Charlottesville, Va.: 1967), vol. II, p. 459.

³² For the Wrays, see Samuel Griffin to George Washington, undated (1789), in *Applications for Office Under President Washington*, Series VII, George Washington Papers, vol. XIII, Library of Congress; Jacob Wray to Washington, May 12, 1790, and Samuel Griffin to Washington, April 24, 1790, *ibid.*, vol. XXXI.

For the Rowlands, see Zachariah Rowland to Oliver Wolcott, Jr., November 6, 1797, in James Rowland entry, *Letters of Application and Recommendation During the administration of John Adams*, RG. 59, Records of the Department of State, National Archives.

³³ "My political conduct in nominations," the President wrote in July 1789, "even if I was uninfluenced by principle, must be exceedingly circum-

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Martha's relatives to federal posts shortly before he left office.³⁴

CUSTOMS AND COMMUNITY: NORTH CAROLINA

Like Virginia, North Carolina claimed an extraordinary number of small ports that needed watching if the revenue laws were to be enforced. In some ways, with its rippled coastline, North Carolina was reminiscent of Massachusetts, but in miniature. There were an unusually large number of ports for a sparsely populated state, so none of them handled the kind of volume found in harbors to the north. But the sheer number of anchorages created important local jobs for 21 customs officers in 1790, with at least as many more subordinate positions created as well.³⁵ The most important of the 19 North Carolina ports were Edenton and Camden on Albemarle Sound at the northern end of North Carolina's irregular coastline; Washington and

spect and proof against just criticism, for the eyes of Argus are upon me, and no slip will pass unnoticed that can be improved into a supposed partiality for friends or relatives." Indeed, within a week of assuming the Presidency, he had written that "I will, to the best of my judgement, discharge the duties of that office with that impartiality and zeal for the public good, which ought never to suffer connections of blood or friendship to intermingle, so as to have the least sway on decisions of a public nature." And 2 weeks later, on March 21, 1789, he added: "I know in my own heart, I would not be in the remotest degree influenced in making nominations by motives arising from ties of amity or blood." George Washington to Benjamin Harrison, March 9, 1789, Washington to Samuel Vaughan, March 21, 1789, and Washington to Bushrod Washington, July 27, 1789, *Writings of Washington*, Fitzpatrick, ed., vol. XXX, pp. 224, 238, 366, respectively.

³⁴"List of Civil Officers of the United States . . . October 1, 1792," "A List of the Officers Employed in the Collection of the Internal Revenues of the United States . . . July 1796," and "Roll of the Officers, Civil, Military, and Naval of the United States [1801]," in *American State Papers, Miscellaneous*, Lowrie and Franklin, eds., vol. I, pp. 57-68, 568-73, and vol. II, pp. 260-319, respectively; William Lewis to George Washington, October 22, 1791, in Applications for Office Under President Washington, Series VII, George Washington Papers, vol. XVII, Library of Congress; Tench Coxe to Alexander Hamilton, October 31, 1792, in *Papers of Hamilton*, Syrett, ed., vol. XII, p. 635.

³⁵"List of the Civil Officers of the United States . . . For the Year Ending October 1, 1792," *American State Papers, Miscellaneous*, Lowrie and Franklin, eds., vol. I, pp. 57-68.

New Bern off Pamlico Sound; and Wilmington, the largest port in the State, in the Cape Fear region.

Albemarle Sound formed one of the state's three distinct customs districts. The region was dotted with several small ports, most of them satellites of the central harbor at Edenton, where a customs collector presided. He directed the service for almost the entire area and used his surveyors to oversee several smaller anchorages, including Hertford, Plymouth, Winton, and Murfreesboro. Another collector ran the Customs Service at Camden, and other tiny ports in the immediate vicinity. Albemarle's geographic oddity resulted in the wide dispersal of customs personnel and created a difficult customs situation.

Official laxity rendered Albemarle a managerial horror. Solitary surveyors of customs in remote backwaters were often slow in reporting and transmitting money they collected. Absenteeism was widely tolerated in an area where kinship and personal ties prevailed over official responsibility. Thomas D. Freeman, the surveyor at Plymouth, ruled in such splendid isolation that it took six months for Thomas Benbury, the Edenton collector and Freeman's immediate superior, to learn that the latter had moved away in February 1792, leaving the port unattended. It took another two months for the federal administration to dismiss Freeman for his "prolonged absence."³⁶

The odyssey of Laurence Mooney, the surveyor of Winton in 1795, was even more improbable. The Irish-born Mooney apparently became homesick shortly after his appointment in 1795 and returned to Ireland for five years. Nobody officially missed him, and in 1800 he resumed his duties as if he had never been away. The story was so fantastic that some years later Treasury Secretary Albert Gallatin went to the trouble to verify it as a vintage example of early maladministration.³⁷

³⁶Tench Coxe to Thomas Benbury, July 13, 1792, and Alexander Hamilton to George Washington, September 17, 1792, in *Papers of Hamilton*, Syrett, ed., vol. XI, p. 29, and vol. XII, p. 392, respectively.

³⁷Albert Gallatin's note, undated (1808), in Laurence Mooney entry, *Letters of Application and Recommendation During the Administration of*

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In the Albemarle area, nepotism was as much a problem as administrative dereliction; the two were probably closely related. In 1793 Samuel Tredwell replaced the deceased Thomas Benbury as customs collector at Edenton and assumed the central administrative position in the region. Although Tredwell was extremely young and inexperienced at the time of his nomination, he was a scion of a well-known local family, and, most important, he was also a nephew of Federalist U.S. Senator Samuel Johnston.³⁸ The Tredwell nomination was not unique. The surveyor of customs at Hertford was Joshua Skinner, Jr., a nephew of William Skinner, the treasurer of North Carolina in the 1780's, U.S. Commissioner of Loans for the State in the 1790's, and a ranking Federalist. Another relative, Steven Skinner, was the surveyor at Edenton; all were part of an extended political family in Albemarle.³⁹

Close ties to the Federalist party and extended nepotism in the Customs Service were not peculiar to Albemarle. At the Port of Washington in the Pamlico Sound area, a single family monopolized the federal offices. Nathan Keais and his sons were merchants and storekeepers who were deeply involved in both commerce and land speculations. The elder Keais was named collector in 1790 despite the fact that, as collector under State auspices during the Confederation, he was still in arrears for customhouse receipts. When Nathan died in 1795, his son William Keais succeeded to the collector's job. John L. Keais,

Thomas Jefferson, RG 59, National Archives; Samuel Tredwell to Alexander Hamilton, January 15, 1795, Applications for Office Under President Washington, Series VII, George Washington Papers, vol. XX, Library of Congress.

³⁸Gabriel Phillips to Thomas Jefferson, October 18, 1801, in Michael Payne entry, Letters of Application and Recommendation During the Administration of Thomas Jefferson, RG 59, National Archives.

³⁹Hugh Williamson to George Washington, March 22, 1790, and John Skinner to Oliver Wolcott, Jr., January 27, 1798, in Applications for Office Under President Washington, Series VII, George Washington Papers, vol. XXV, Library of Congress. The second letter cited above was filed mistakenly with the George Washington Papers rather than those of the Adams administration, apparently because the date on the letter is unclear.

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William's brother, was the port's weigher and gauger of customs.⁴⁰

There is no question that both the relatively scattered population of the indented Carolina coast and the strong clannishness of its people accounted for the inbred nature of North Carolina's Customs Service. President Jefferson took note of this problem when he took office in 1801, intending to do something about it, but he never did. Instead, the first Democratic-Republican President usually exchanged one political clan for another more friendly to his administration, ridding the Customs Service of Federalists only to replace them with Republicans. As the next section details, Jefferson's Presidency confirmed and sustained the Federalist practice of applying a political test to customs appointments.

TURNING OUT THE FEDERALISTS

In what Henry Adams called "the revolution of 1800," Thomas Jefferson turned the Federalists out of the new White House; in 1801, he began to shoo them out of the customhouses as well. Jefferson removed 50 of the 146 customs appointments subject to Presidential review, dropping all but one of the officers in the Ports of New York and Philadelphia and firing all five New Jersey port collectors. In New England, too, Portsmouth, New Hampshire, was swept clean; the collectors at New Haven and Middletown, Connecticut, went; and 10 customs officers in Massachusetts were removed. Nor did the South

⁴⁰ William Blount to John Gray Blount, January 31, 1790, John Haywood to John Gray Blount, March 18, 1790, Thomas Blount to John Gray Blount, February 6, 1795, October 19, 1795, in *The John Gray Blount Papers*, Alice B. Keith, ed., 2 vols. (Raleigh, N.C.: 1959), vol. II; Nathan Keais to George Washington, January 2, 1790, in *Applications for Office Under President Washington*, Series VII, George Washington Papers, vol. XVI, Library of Congress; William Kennedy to Thomas Jefferson, October 27, 1808, in W.J. Sheppard entry, and William Blackledge to Albert Gallatin, November 11, 1801, in William Orr entry, *Letters of Application and Recommendation During the Administration of Thomas Jefferson*, RG 59, National Archives.

escape. Four Maryland collectors and six Virginians went. Inevitably, lesser officials, including about 270 tidesmen, lost their jobs, as new collectors cleaned their houses and restaffed them with men who shared their political persuasion. The "exterminating system," as one bitter Federalist partisan called it, confirmed the politicization of the Customs Service begun under the Federalists, and fixed the cycle of removals and appointments each time a new party took over in Washington during the course of the 19th century.⁴¹

Sometimes the removals in Jefferson's administration were openly political, other times they were more subtle. Alexander Freeland and Joseph Tucker were removed for alcoholism, but in retrospect their derelictions, if any, were more political than alcoholic. Alexander Freeland, the collector at Great Egg Harbor, New Jersey, had "taken to excessive hard drink," it was reported, "and is frequently intoxicated." Another complaint about him, however, is more illuminating. Recounting Freeland's deep involvement in local Federalist politics, a New Jersey Jeffersonian wrote the President in 1803 that the collector's removal "will be highly recommendable [to] . . . the Republicans of the County at Large . . . at this critical time in consequence of the approaching election." Jefferson replaced him without further investigation.⁴²

Joseph Tucker's removal for drunkenness is even more suspect. The collector at York, Maine, the Jefferson administration learned, was "constantly drunk and incapable of business"; he was also described as a "violent federalist." Tucker was turned out. The town of York immediately convened a town meeting and voted 106 to 0 both to refute the allegation and to support

⁴¹See Carl E. Prince, "The Passing of the Aristocracy: Jefferson's Removal of the Federalists, 1801-1805," *Journal of American History*, vol. LVII (1970), p. 570.

⁴²Benjamin B. Cooper to Thomas Jefferson, September 7, 1803, in Joseph Winner entry, *Letters of Application and Recommendation During the Administration of Thomas Jefferson*, RG 59, National Archives; John Holmes et al. to Jefferson, December 14, 1803, in Alexander Freeland entry, in *ibid.*

Tucker's appeal for restoration of his office. Every selectman in town joined the citizens in signing a petition to the President, which concluded by pointing out that Tucker "has held every office in the Town of which he would accept." Although the signers included as many Jeffersonian Republicans as Federalists, the removal stuck.⁴³

In other instances the terminations were overtly political. Edward Pope, the collector at New Bedford, Massachusetts, presided over an apparently unrestrained cadre of Federalists in his customhouse. The collector continued to run a general store on the waterfront and was a judge on the county court of common pleas while in office. Pope, like many other collectors, left most of the routine duties to his deputies; for this he was charged with "inattention to the duties of office." His real crime, however, was that, at a public meeting during the heated election of 1800, Pope was said to have described Jefferson as "a man of infamous character, a man of no religion and who wishes the destruction of all religion, and all good government." Needless to say, there was no way he could keep his office after Jefferson's election.⁴⁴

Southern collectors suffered similar fates, occasionally on a wholesale level, if the Sawyer clan is any indication. The Sawyers monopolized customs appointments in the Albemarle region of North Carolina. The family owned a schooner engaged in the West Indian trade from Albemarle ports, possessed a "considerable inheritance," and were also "gentleman planters." Deeply involved in local Federalist politics, four brothers were rewarded

⁴³ Moses Lyman et al. to Jefferson, January 18, 1803, Joseph Tucker entry, in *ibid*; Richard Cutts to Jefferson, November 25, 1802, Samuel Derby entry, in *ibid*.

⁴⁴ Only some of the petitions demanding Edward Pope's removal and describing his political activities survive. See *ibid*, Josiah Dean to Samuel Bishop, January 18, 1804, Dean et al. to Albert Gallatin, August 27, 1805, and Dean to Thomas Jefferson, July 7, 1808, in Isaiah Weston entry, and John Nye to Jefferson, November 28, 1804, Abraham Wardwell et al. to Jefferson, December 19, 1804, in an Anonymous entry, Jacob Hafford's Deposition, July 4, 1808, Nathaniel Howland entry. Daniel Ricketson, *The History of New Bedford, Massachusetts* (New Bedford: 1858), pp. 206-07, 293, 332.

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with customs jobs by the Washington and Adams administrations. Enoch Sawyer was the collector at Camden; his three brothers, Frederick, M.E., and Edmund, were surveyors of Newbiggen Creek, Camden, and the Pasquotank River port of entry. Their appointments ensured their political loyalty and probably did not hurt business either. Jefferson relieved them all of their posts during his first term.⁴⁵

Those collectors who survived the change of administrations usually had to accept new rules reflecting the change in party more than any easing in political criteria for office holders. Obvious Federalists were usually kept on only because their service in the Continental Army made it difficult to justify their removal on any grounds. This was true of both James Simons in Charleston and Benjamin Lincoln at Boston. Simons was an able and engaging figure. He fought with the Continental Army all through the Revolution, rising through the ranks to major. Even Jeffersonian U.S. Senator Pierce Butler was willing to recommend his appointment to Washington in 1795, noting that "when they [the other applicants] were writing in Mercantile Houses, he [Simons] was fighting for his Country and freely shedding his blood for her." After the war, Simons became a merchant, but, given the economic difficulties of the Confederation, he never had much success. Consequently, his appointment as the naval officer in 1795 and promotion to collector two years later were most welcome. Simons put the Charleston customhouse back on firm footing after a series of demoralizing embezzlements by his predecessor, Isaac Holmes, had left that establishment in a shambles.

⁴⁵ Hugh Williamson to George Washington, February 5, 1790, in Applications for Office Under President Washington, Series VII, George Washington Papers, vol. XXX, Library of Congress; William F. Muse to Charles Johnson, October 17, 1801, James L. Shannonhouse entry, in Letters of Application and Recommendation During the Administration of Thomas Jefferson, RG 59, National Archives; *The Papers of Archibald D. Murphey*, William H. Hoyt, ed., 2 vols., (Raleigh, N.C.: 1914), vol. I, p. 336n; and Jesse F. Pugh, *A Biographical History of Camden County* (Old Trap, N.C.: 1957), pp. 92-97, 129-32.

But Simons was also deeply involved in South Carolina politics and had no compunction about using the customhouse for all it was worth politically. When, after the change of administration in 1801, he was accused of compelling his subordinates to work for John Adams' election, Simons as much as admitted it. "I did not know of any officer in the Customs appointed by me," he wrote to the Comptroller of the Treasury, "who was averse to Mr. Adams election and consequently no occasion presented itself to use compulsory measures." Clearly, as one critic noted, it was true that the Charleston customhouse nested "a little army" of Federalists.

From the outset, the Jefferson administration was in a quandary about how to handle Simons. Although Treasury Secretary Albert Gallatin described Simons as a "violent federalist," Gallatin also knew him to be "an excellent officer." Gallatin soon found a solution he would apply elsewhere. Simons acknowledged that in 1800 he had openly "supported Mr. Adams election which I did as well from a just sense of Services as from personal gratitude for the benefit he conferred on me and my large family by the beneficent office to which he appointed me." However, in writing to Gallatin, Simons agreed that he would dissociate himself from politics if he could keep his post. He also agreed to pass out any vacancies in the customs ranks to Republicans as the openings occurred.⁴⁶ A consummate

⁴⁶For James Simons, see Samuel Smith to John Rutledge, May 12, 1801, and James Simons to Rutledge, June 2, 1801, in the John Rutledge Papers Southern Historical Collection, University of North Carolina Library; James Simons to Pierce Butler, February 25, 1795, Butler to George Washington, March 15, 1794 [1795], James Simons to Edmund Randolph, May 20, 1795, Jacob Read to Randolph, May 20, 1795, and Butler to Randolph, May 20, 1795, in Applications for Office Under President Washington, Series VII, George Washington Papers, vol. XXX, Library of Congress; Albert Gallatin's note on James Simons folder [1801], Anonymous to Thomas Jefferson, November 23, 1801, James Simons to John Steele, September 30, 1802, James Symonds [Simons] entry, Albert Gallatin's note filed with Daniel D'Oyley to Gallatin, July 29, 1801, Daniel D'Oyley entry, Letters of Application and Recommendation During the Administration of Thomas Jefferson, RG 59, National Archives; *Papers of Hamilton*, Syrett, ed., vol. X, p. 432n; James Simons to John Steele, December 15, 1802, *Papers of John*

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politician, the new Secretary of the Treasury found a way to assuage the local Jeffersonian interest in Charleston even as he avoided offending those who valued both Simons' integrity and wartime service.

The same compromise worked in Boston. Benjamin Lincoln, like Simons, was forced to produce a mea culpa in writing. "If any of you," the collector wrote his subordinates in the custom-house in 1802, "vilified the Chief Magistrate of the Union in terms rude and indecent . . . I have to ask that you will in future recollect that there is an infinite difference between Right and propriety of exercising that Right." He would, he added, fill all vacancies with Jeffersonians.⁴⁷

By the time Jefferson left office 20 years after ratification of the Constitution, the U.S. Customs Service had been thoroughly politicized by both parties. Perhaps this was inevitable, given both the size of the Service and its extraordinarily visible local role in one American community after another. Although it may seem odd to 20th-century observers, the Customs Service functioned well at both levels: politically in the service of the party in power, and administratively in the implementation of national policy, as both the embargo and nullification controversies, described in the next chapter, make clear.

Steele, Henry M. Wagstaff, ed., 2 vols. (Chapel Hill, N.C.: 1924), vol. I, pp.340-41; George C. Rogers, Jr., *Evolution of a Federalist: William Loughton Smith of Charleston, 1758-1812* (Columbia, S.C.: 1962), pp. 186, 188, 192, 344, 347, 364; and George C. Rogers, Jr., *Charleston in the Age of the Pinckneys* (Norman, Okla.: 1969), p. 118.

⁴⁷Petition to James Madison [undated 1801], and passim, Benjamin Lincoln entry, Letters of Application and Recommendation During the Administration of Thomas Jefferson, RG 59, National Archives; and Ship-ton, *Sibley's Harvard Graduates*, vol. XII, p. 437.

Chapter III

CUSTOMS AND NATIONAL POLICY: EMBARGO AND NULLIFICATION, 1807-1833

As the nation grew, so did its foreign trade. A changing tariff policy and a rapidly expanding Customs Service accompanied this growth. Two widely different events in early national America made the fledgling Customs Service the instrument of Presidential action and national policy. Jefferson's embargo on trade with Britain in 1807 and Jackson's effort to undo South Carolina's nullification of the Tariffs of 1828 and 1832 pushed the agency off its exclusively economic course and plunged it ever deeper into the national political maelstrom.

POLITICAL POLICY AND ADMINISTRATIVE AND ECONOMIC CHANGE

On June 22, 1807, the British ship *Leopard* fired on the U.S. frigate *Chesapeake*, damaging it badly. The attack ignited the smoldering commercial and military tensions over America's efforts to bypass the British blockade of Napoleonic Europe and to expand U.S. trade with France. President Jefferson stopped short of asking it for a declaration of war with Britain and instead pressed Congress to pass the Embargo Act. This imperfect measure, signed on December 22, 1807, and scarcely improved by three successive amending acts in the next 18 months, was designed to keep this country out of war and yet punish Britain by cutting off all trade with the United States.

The act had the unintended result of exacerbating regional and political tensions in the country. A coalition of Republican legislators from the mainly agricultural southern and western states rallied behind the President and his embargo, whereas the New England Federalists, whose economic health depended on overseas trade, opposed it bitterly. Jefferson's patriotic gesture became a political cause, and it remained so for the next several years.

A quarter-century later, Jackson's monumental victory in the Presidential election of 1832 turned in part on his exploitation of the still-festering foreign trade issue. Passage of a new, clearly protective, tariff that year completed the evolution of a national policy that fostered northern and western industrialization mainly at the expense of a southern agrarian economy resting on cotton and slavery. South Carolina's angry nullification of the Tariffs of 1828 and 1832 forced Jackson's hand and allowed him to use his dynamic concept of strong Presidential executive action.

Both Jefferson and Jackson called on the Customs Service to help implement executive and legislative action, and the agency grew to meet these new demands. America's economic policy also called for more customs personnel, from collectors to boatmen. The successive protective tariffs in 1816, 1824, 1828, and 1832 together mandated a strengthening of customs operations, not only in Atlantic port cities, but also along the Canadian and Florida borders and within the river system of the growing West.

For one thing, these tariffs meant generally higher costs for foreign imports and much higher duties on certain specific items. Smuggling, always a great American pastime, became more lucrative, as import duties increased to an average exceeding 20 percent of value in 1816 and 30 percent in 1828. At the same time, day-to-day operations in customhouses along the entire Atlantic coast became more complicated; for example, the law called for item-by-item cargo clearances, and these required more staff. The inevitable result was that the size of the agency soared

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as well. The number of customs personnel in the port cities grew from about 1,100 in 1801 to over 2,100 by 1816, and to more than 4,000 as of 1831.¹ Controlled growth was out of the question. Jefferson's and Jackson's confrontational national policies placed Customs center stage in the political arena. The extension of an appointive system based on political allegiance (culminating in Jackson's "spoils system") made rational development of the service an impossibility. Like Topsy, the U.S. Customs Service in the early national era "just grewed."

The Treasury Department paid scant attention to controlling this expansion for two reasons: First, the Jeffersonians were frugal, even cheap, and rejected almost any reform that required systematic appropriations for new positions; Jefferson's nonpolicy was to permit additional customs staff only when exigencies of the moment demanded. Second, Albert Gallatin, Jefferson's and Madison's Treasury Secretary from 1801 to 1817, was an energetic administrator who operated very personally. He maintained close relationships with subordinates and mastered details that would have daunted less efficient administrators. Things worked well while he was in charge, but no real administrative system worthy of the name was introduced. Under these conditions, growth was chaotic—but growth there was. Growing urban populations in the Northeast forced recruitment of an ever-larger army of tidewaiters in the Atlantic ports. A booming West created new ports of call. In a nutshell, if ever administrative reform was needed, it was during and after the embargo era; its absence was evident in 1816, when the first protective tariff became law just as Gallatin was leaving office. Much of his system and the knowledge to make it work departed with him, just as protection became basic American policy.

Yet no reform occurred. Instead, a new Jeffersonian Republican administration under James Monroe called for retrenchment in Washington. Looking for ways to reduce a national debt

¹Statistical data are derived from U.S. Department of Commerce, *Historical Statistics of the United States, Colonial Times to 1957* (Washington, D.C.: U.S. Government Printing Office, 1957), p. 710.

that had doubled to \$99 million after the War of 1812, the Senate asked the Treasury Department for a list of "useless officers of customs." The resulting Senate investigations centered mainly on the elimination of many small ports of entry—a "reform" supported by many collectors in large ports, because these small customs outposts drew off volume and fees from larger neighboring harbors.

The collector at Norfolk, Virginia, for example, noted, "I have very long entertained the opinion. . . that we have, by far, too many collection districts," concluding that they offered "very great facilities for smuggling." He cited the port of Folly's Landing, Virginia, as a prime example, but did not say how elimination of even the nominal customs supervision there would help prevent smuggling rather than encourage it. The collector at Baltimore suggested that the proliferation of small ports was in part the result of congressional efforts to serve "the accommodation of their neighborhood and counties."² Politics as usual, perhaps. But the Embargo of 1807 was anything but that.

THE EMBARGO OF 1807: THE FIRST PHASE

Treasury Secretary Albert Gallatin understood just how weakly drawn the first Embargo Act really was. For example, it failed to articulate clear penalties for violation and did not regulate the Atlantic coasting trade. In a circular letter to collectors issued the same day the first Embargo Act was passed, December 22, 1807, Gallatin forbade all departures of American vessels destined for foreign ports; although the law required bonds for coasting, the Secretary anticipated that collectors might have trouble distinguishing between vessels legitimately plying the American seaboard and those seeking to evade the new law. Gallatin also warned the President that collectors must

²Senate Document 188, 15th Cong., 1st Sess. (April 15, 1818, and Senate Document 27, 15th Cong., 2d Sess. (December 2, 1818), both in *Annals of Congress*.

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“depend on physical force to detain vessels, and there are many ports where we have neither the revenue cutters nor perhaps more than one single officer.”³

Baltimore Customs Collector Gabriel Christie quickly confirmed Gallatin's misgivings. Within days of the act's passage, Christie reported that merchants were evading the law “by putting of some other person in the Command [of a vessel] than the one to whom the permission [to sail on a coasting run] may have been granted.” The new master, he pointed out, claims ignorance of restrictions. He also suggested to the Treasury Secretary that no vessel over 50 tons should be cleared for coasting, even though this ruled out clearances of a significant portion of America's overseas fleet. Gallatin admitted to Christie that he “perceived the defects of the embargo act as soon as it was published,” and suggested that collectors might take it upon themselves to deny coasting papers—a solution that placed the burden of judgment, as usual, squarely on the collector. Christie replied that no collector could stand up to the local pressure that would follow the use of so much discretionary power, so that the suggestion from Treasury was just empty advice.⁴ The 50-ton rule went into effect, difficulties notwithstanding.

Other problems became apparent as well. Merchants employed vessels with foreign registry, a practice that Jefferson deplored as “fraudulent conversions.” Within a week Gallatin fired off another circular notifying collectors that “no American vessels purchased by foreigners subsequent to the Embargo, can be considered as excepted from the operation of the Act.” The next day, on December 29, 1807, Gallatin ordered Christie to

³ Albert Gallatin to Thomas Jefferson, December 22, 1807, Gallatin to Collectors of Customs, December 22, 1807, *Microfilm Edition of the Papers of Albert Gallatin*, Carl E. Prince, ed. (Philadelphia: 1970), roll 15; Gallatin to Jefferson, December 23, 1807, Papers of Thomas Jefferson, Library of Congress.

⁴ Gabriel Christie to Albert Gallatin, December 24, 1807, and Gallatin to Christie, December 28, 1807, *Microfilm Edition of the Papers of Albert Gallatin*, Prince, ed., roll 15.

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seize a Portuguese vessel on the ground that its captain was an American citizen. He accused the captain of a "fraudulent attempt" to take advantage of his dual citizenship and ordered the vessel impounded and the captain's American papers seized.⁵

Gallatin's perspicacity extended only so far, however. Despite the pending crisis in customs enforcement, politics still filled jobs in the customhouse. For example, within two weeks of the passage of the Embargo Act, Gabriel Christie fell seriously ill and was unable to oversee customs operations in Baltimore. His deputy, John Brice, became acting collector, conducting his office in this most difficult time with energy and ability and proving to be "one of the most dedicated members of the customs service." After Christie died, however, Brice, a Federalist, was passed over as his successor in favor of an inexperienced Jeffersonian Republican.⁶ No disaster, it seemed, was justification for ignoring political ritual.

THE EMBARGO:

ENFORCEMENT ON THE CANADIAN AND FLORIDA BORDERS

During the first weeks of the embargo, Gallatin was deluged with angry letters from his collectors. Officers from Boston to Baltimore complained that their customhouses were not prepared to enforce the law and warned of serious disruptions to both the collection of the revenue and the operation of the service.⁷ The first hint of massive enforcement problems came

⁵Thomas Jefferson to Albert Gallatin, December 29, 1807, Papers of Thomas Jefferson, Library of Congress; Gallatin to Gabriel Christie, December 28, 29, 1807, "Letters Sent by the Secretary of the Treasury to Collectors of Customs at All Ports," Microfilm Publications #175, roll 1, Record Group 56, National Archives.

⁶See Richard J. Mannix, "The Embargo: Its Administration, Impact and Enforcement," Ph.D. dissertation, New York University, 1975, p. 110.

⁷For a sampling of collectors' reactions to the law, see John Barnes to Albert Gallatin, December 23, 1807, Benjamin Lincoln to Gallatin, December 23, 1807, and January 7, 1808, Gallatin to David Gelston, December 30, 1807, Gallatin to Allen McLane, December 30, 1807, John Shee to Gallatin,

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from the most remote coastal waters and the long border with Canada. The demand for flour and grain in Europe had generated a profitable illegal market in ports along the borders of Maine, Vermont, and New York. Merchants claimed that they were loading flour, corn, rice, or rye for their coastal trade. Little grain found its way to other American ports, however, for in Canada these goods sold for up to eight times their American value, and often three times the sum shippers were required to post as bond under the first Embargo Act. Forfeiture of the bonds was a small price to pay for selling a cargo in Canada.

Even after the second Embargo Act was added in January 1808, Gallatin still found the law almost impossible to enforce. Local courts and juries refused to convict evaders, who were often viewed as heroes.⁸ In an 1808 circular describing the new legislation, the Secretary notified collectors that “no longer could goods be moved across the Canadian border.” It was a futile announcement, even though the President himself fumed over smuggling at Alburg, Vermont, Oswego, New York and Portland and Passamaquoddy, Maine as well as St. Mary’s, Georgia, and New Orleans in the South. Those who knowingly violated American law in these places, Jefferson concluded, formed the “most worthless part of society.”⁹ Maybe so, but a significant portion of the population along the Canadian border was involved. New York Governor Daniel Tompkins candidly told Gallatin that the embargo courted “open insurrection” from Niagara Falls to Passamaquoddy Bay. The entire border population was aflame with resistance, he said, both because people

December 28, 31, 1807, January 7, 1808, John Brice to Gallatin, December 28, 1807, *Microfilm Edition of the Papers of Albert Gallatin*, Prince, ed., roll 15.

⁸Alexander J. Dallas to Albert Gallatin, July 30, 1808, and passim, Albert Gallatin Papers, New-York Historical Society; Gallatin to Thomas Jefferson, August 6, 1808, and passim, Thomas Jefferson Papers, Library of Congress.

⁹Albert Gallatin to Collectors of Customs, March 12, 1808, Circulars Sent to Collectors of Customs, Series T., RG 56, National Archives; Thomas Jefferson to Albert Gallatin, August 11 and 19, 1808, in Albert Gallatin Papers, New-York Historical Society; Gallatin to Jefferson, May 28, 1808, Thomas Jefferson Papers, Library of Congress.

generally thought the embargo a bad law and because the lure of high if illicit profits was too powerful to resist.¹⁰

Alburg, Vermont, the port of entry on Lake Champlain, proved a case in point. Collector Daniel Sheldon, Gallatin was told, reported a "general disregard of the law in his sector." By the spring of 1808, Jefferson himself believed an "insurrection" had taken place in that border town, and sent Federal troops to help the collector enforce the law and keep the peace. Smugglers shipped grain across the lake to Canada and brought weapons into the United States on the return trip. The general public tended to cheer those who sabotaged customs officers from time to time. By the first months of 1809, as Jefferson was about to leave office, the embargo had fallen into such disrepute that for a small fee some of the troops—earlier employed to support and protect the collector—helped to load rafts with goods to be smuggled into Canada. Alburg, in short, was a visible manifestation of the failure of customs to enforce a weak law ineffectively supported in Washington.¹¹

Maine also proved a headache for customs officials. Passamaquoddy Bay, just below the Canadian border, was a small port of entry guarding a large body of water so pocketed with coves and inlets that customs coverage was impossible. Smuggling there was rampant. Portland was another trouble spot. By the end of 1808, one local official reported, "certain collectors east of Boston" (Portland included) were pressured by local merchants to "cancel

¹⁰Gallatin to Jefferson, July 29, August 9 and 23, and September 14, 1808, Thomas Jefferson Papers, Library of Congress.

¹¹All sorts of details exist describing the anarchic state of things in Alburg. For example, see Jabez Penniman to Albert Gallatin, February 29, 1808, Gallatin to Penniman, March 24 and April 19, 1808, and Jefferson to Gallatin, April 19, 1808, in Albert Gallatin Papers, New-York Historical Society; Tench Coxe to Gallatin, December 18, 1808, Gallatin to Lewis F. Delesdernier, March 29, 1808, and passim, *Microfilm Edition of the Papers of Albert Gallatin*, Prince, ed., rolls 16, 17, and 18. Newspapers were also full of stories about Alburg, attention drawn to the community by the deployment of soldiers to the town. See, for example, *Hartford Connecticut Courant*, February 3 and 10, 1808; *New York Evening Post*, May 16 and July 25, 1808; Providence, Rhode Island, *Gazette*, March 25, 1809; *Maryland Herald and Hagerstown Weekly Advertiser*, December 9, 1808.

Edward Randolph Esq: Collect. Survey and
Searcher of his Maj^{ty} Customs in
New England

To Giles Randolph Gent: Deputy Collect. Survey and
Searcher of his Maj^{ty} Customs in all the Colonies, Provinces, and
Islands in New England

Whereas his Maj^{ty} by Letters Patents bearing date Westminster the 15. day of
October in the three and thirtieth year of his Majesty hath Created an Officer of Col-
lect. Survey and Searcher of his Customs in the Colony of New England under the manage-
ment of the Commissioners of the Customs in England and by the same Letters Patents hath
en and Comanded the said Officer to Edward Randolph Esq: To be Executed by himselfe
his sufficient Deputy or Deputys therefore for the more effectuall performance of
his powers and trusts committed to mee by the said Letters and Patents and to the intent
of the severall Acts relating to the management of his Maj^{ty} Customs therein Mentioned
may bee duly executed I the said Edward Randolph Esq: doe hereby constitute and
appoint you the said Giles Randolph to bee Deputy Col. Survey and Searcher of the
Customs in all the Colonies, Provinces, and Islands, in New England with full power
and Authority to Collect and receive all such rates and Duties as by the Act for the bet-
tering the Plantation Trade made in the 25. year of his Maj^{ty} Reigne are or shall
become due and payable to his Maj^{ty} his Heirs and Successors and to Search for and
seize all such European goods as shall at any time bee imported into any of the said
Colonies Provinces or Islands contrary to the Act for the encouragement of trade made
in the 15. year of his Maj^{ty} Reigne which shall not have bene bona Fide laden
in the Kingdoms of England Dominion of Wales and Towne of Berwick upon Tweed
nor at such of the Plantations abroad which shall come to any of the said
Colonies Provinces etc: and not have the said rate and duties as aforesaid
respectively imported on the said comod: and also to seize all such Ships and Vessels
and their Lading's respectively which contrary to the aforesaid Lawes or any of
them shall lade or shall have laden any of the said Plantation comod: not
having first given bond with condition as is provided in the Act for the encourag-
ing and increasing of Shipping and Navigation made in the 12. year of his Maj^{ty}
Reigne and also to Search for and proceed against any other goods or merchandises



Known for its role in the Boston Tea Party, the *Dartmouth* arrived in Boston with a cargo of tea in November 1773. The colonists realized that once the tea was ashore and the duties paid or secured in some fashion, the protest against the hated Tea Act was a lost cause. When the Royal Collector of Customs refused the re-export of the tea to England, the colonists had a dilemma. Under a long-standing rule, Customs officers could seize dutiable goods if payment were not made within 20 days, an action the colonists feared would result in its ultimate consumption in America. On December 16, 1773, the night before the 20-day period ended, Sons of Liberty boarded the *Dartmouth* and two other ships and dumped the tea into Boston Harbor. *The Brig Dartmouth* by Ruth Edwards, 1967. Hood Museum of Art, Dartmouth College, Hanover, New Hampshire. Gift of the Class of 1907.



Customs Officer John Malcolm tarred and feathered at the Liberty Tree in Boston, 1774.

RECEIPTS AND EXPENDITURES OF THE NATIONAL GOVERNMENT: 1789 TO 1940

YEARLY AVERAGE FOR YEAR ENDED JUNE 30—	ORDINARY RECEIPTS			
	Total	Customs ²	Internal revenue	
			Income and profits tax	Miscella- neous
1789-1800 ⁵	5,717	5,020	.....	⁶ 375
1801-1810 ⁷	13,056	12,046	.....	201
1811-1820 ⁷	21,032	16,383	.....	1,545
1821-1830 ⁷	21,923	19,852	.....	32
1831-1840 ⁷	30,461	20,470	.....	5
1841-1850 ⁷	28,545	25,649	.....	⁶ 1
1851-1860	60,237	54,498	.....	.....
1861-1865	160,907	68,989	⁹ 28,005	⁶ 54,566
1866-1870	447,301	178,903	59,604	171,316
1871-1875	336,830	186,200	7,760	112,217
1876-1880	288,124	146,594	(*)	116,697
1881-1885	366,961	201,963	¹⁰ 29	132,102
1886-1890	375,448	216,557	.....	126,683
1891-1895	352,891	176,861	¹¹ 77	150,228
1896-1900	434,877	185,089	.....	206,623
1901-1903	559,481	260,117	.....	255,374
1903	561,881	284,480	.....	230,810
1904	541,087	261,275	.....	232,904
1905	544,275	261,799	.....	234,096
1906	594,984	300,252	.....	249,150
1907	665,860	332,233	.....	269,667
1908	601,862	286,113	.....	251,711
1909	604,320	300,712	.....	246,213
1910	675,510	333,683	80,952	968,082
1911	701,533	314,407	33,517	289,012
1912	692,609	311,322	28,583	293,020
1913	724,111	318,891	35,006	309,411
1914	734,673	292,320	71,381	308,660
1915	697,911	209,787	80,202	335,468
1916	782,535	213,186	124,937	387,765
1917	1,124,325	225,962	359,681	440,685
1918	3,664,583	179,003	2,314,006	872,028
1919	5,152,257	184,458	3,018,784	1,296,501
1920	6,694,565	322,903	3,944,949	1,460,082
1921	5,624,933	308,564	3,206,046	1,390,380
1922	4,100,104	356,443	2,068,128	1,145,126
1923	4,007,135	561,929	1,678,607	945,865
1924	4,012,045	545,838	1,842,144	953,013
1925	3,780,149	547,561	1,760,538	828,638
1926	3,962,755	579,430	1,982,040	855,509
1927	4,129,394	605,300	2,224,993	644,422
1928	4,042,348	568,986	2,173,953	621,019
1929	4,033,250	602,263	2,330,712	607,308
1930	4,177,942	587,001	2,410,987	628,308
1931 ¹³	3,180,639	378,354	1,860,394	569,387
1932 ¹³	2,005,725	327,755	1,057,336	503,670
1933 ¹³	2,079,697	250,760	746,206	858,218
1934 ¹³	3,115,554	313,434	817,961	¹³ 1,822,612
1935 ¹³	3,800,467	343,353	1,099,119	¹³ 2,178,571
1936 ¹³	4,115,957	386,812	1,426,575	¹³ 2,086,276
1937 ¹³	5,293,840	486,357	¹⁴ 2,163,414	¹³ 2,433,726
1938 ¹³	6,241,661	359,187	¹⁴ 2,640,285	¹³ 3,031,034
1939 ¹³	5,667,824	318,837	¹⁴ 2,188,757	¹³ 2,972,464
1940 ¹³	5,924,836	318,591	¹⁴ 2,125,325	¹³ 3,177,809

RECEIPTS AND EXPENDITURES OF THE NATIONAL GOVERNMENT: 1789 to 1940

ORDINARY RECEIPTS				Surplus (+) or deficit (–) ordinary receipts compared with expenditures chargeable against them ¹	Postal revenues, excluding surplus postal receipts ²	Postal expenditures, excluding postal deficiencies ³
YEARLY AVERAGE FOR YEAR ENDED JUNE 30—	Sales of public lands ⁴	Surplus postal receipts	Miscel- laneous receipts			
1789–1800 ³	69	⁴ 30	283	– 59	117	108
1801–1810 ⁷	457	⁹ 22	330	+ 3,970	403	390
1811–1820 ⁷	1,621	51	1,430	– 2,911	862	823
1821–1830 ⁷	1,388	(⁴)	650	+ 5,761	1,400	1,415
1831–1840 ⁷	7,452	(⁸)	2,533	+ 5,966	3,347	3,272
1831–1840 ⁷	2,085	.....	809	– 5,553	4,622	4,589
1851–1860	4,583	.....	1,157	+ 74	6,798	6,947
1861–1865	555	.....	19,994	– 522,878	10,961	10,357
1866–1870	2,110	.....	44,368	+ 69,659	16,422	17,443
1871–1875	2,223	.....	28,429	+ 49,370	23,642	23,661
1876–1880	1,025	.....	23,808	+ 32,526	29,762	29,253
1881–1885	6,086	.....	26,799	+ 100,270	42,011	42,466
1886–1890	8,097	.....	24,111	+ 96,314	52,508	52,120
1891–1895	2,650	.....	23,136	– 10,708	72,965	74,001
1896–1900	1,526	.....	41,639	– 22,574	90,311	89,226
1901–1903	5,670	.....	38,321	+ 23,922	132,823	133,471
1903	8,926	.....	37,665	+ 44,875	134,224	136,043
1904	7,453	.....	39,455	– 42,573	143,583	145,893
1905	4,859	.....	43,521	– 23,004	152,827	152,356
1906	4,880	.....	40,703	+ 24,782	167,933	165,802
1907	7,879	.....	56,081	+ 86,732	183,585	182,648
1908	9,732	.....	54,306	– 57,334	191,479	195,501
1909	7,701	.....	40,605	– 80,123	203,562	201,641
1910	8,256	.....	45,520	– 18,105	204,100	201,000
1911	5,732	.....	59,075	+ 10,631	237,880	237,661
1912	5,393	.....	54,283	+ 2,728	246,744	246,961
1913	2,910	.....	57,893	– 401	266,620	261,052
1914	2,572	3,800	55,940	– 408	284,135	283,558
1915	2,167	3,500	66,787	– 62,676	283,748	291,945
1916	1,888	.....	54,759	+ 48,478	312,058	300,728
1917	1,893	5,200	81,903	– 853,357	324,526	319,890
1918	1,969	48,631	247,950	– 9,033,254	295,845	322,628
1919	1,405	89,906	561,204	– 13,370,638	274,941	362,161
1920	1,910	5,213	950,508	+ 212,475	431,937	418,607
1921	1,530	.....	718,412	+ 86,724	463,491	489,506
1922	895	81	538,431	+ 313,802	484,772	481,316
1923	657	.....	820,077	+ 309,657	532,828	524,366
1924	522	.....	670,728	+ 505,367	572,949	574,774
1925	624	.....	642,788	+ 250,505	599,591	616,120
1926	754	.....	644,932	+ 377,768	659,820	640,286
1927	621	.....	653,859	+ 635,810	683,122	687,365
1928	385	.....	678,006	+ 398,828	693,634	693,675
1929	315	.....	492,653	+ 184,787	696,948	687,700
1930	396	.....	551,250	+ 183,789	705,484	711,986
1931 ¹³	230	.....	381,273	– 901,959	656,463	656,886
1932 ¹³	170	.....	116,704	– 2,942,051	588,172	500,846
1933 ¹³	103	.....	224,420	– 2,245,453	587,631	582,626
1934 ¹³	99	.....	161,417	– 3,255,393	586,733	578,761
1935 ¹³	87	.....	179,337	– 3,782,966	630,795	632,633
1936 ¹³	74	.....	216,210	– 4,952,929	665,343	667,621
1937 ¹³	71	.....	210,272	– 3,252,540	726,201	730,919
1938 ¹³	96	.....	208,060	– 1,449,626	728,634	728,187
1939 ¹³	248	.....	187,517	– 3,600,514	745,955	743,410
1940 ¹³	(13)	.....	273,112	– 3,741,249	(13)	(15)

Notes and source on overleaf.

THE U.S. CUSTOMS SERVICE

Source: *Historical Statistics of the United States, Colonial Times to 1957* (Washington, D.C.: GPO, 1957), p. 167.

Note.—In thousands of dollars. Figures prior to 1916 are on the basis of warrants issued (net); thereafter on the basis of daily Treasury statements (unrevised) except as noted. General, special, and trust accounts are included for 1780 to 1930; trust and related accounts (increment on gold, etc.) are excluded beginning with 1931.

¹ Surplus or deficit takes into account public debt retirements chargeable against ordinary receipts beginning 1918.

² Based on reports of the Post Office Department. Expenditures include adjusted losses, etc., postal funds, and expenditures from postal balances; they exclude departmental expenditures in Washington, D.C., to the close of the fiscal year 1922, and amounts transferred to the civil service retirement and disability fund, fiscal years 1921 to 1926; in 1927 to 1939 the 3½ percent salary deductions are included.

³ Includes tonnage tax prior to 1932. Beginning 1932, tonnage tax is included in miscellaneous receipts.

⁴ On the basis of warrants issued 1780 to 1930; thereafter, on basis of checks issued.

⁵ Average for period Mar. 4, 1789, to Dec. 31, 1800.

⁶ Averages are for entire period though there were no amounts under these items for certain years.

⁷ Years ended Dec. 31, 1801 to 1842; average for 1841–1850 is for the period Jan. 1, 1841, to June 30, 1850.

⁸ Less than \$500.

⁹ Average for 1863 to 1865.

¹⁰ Average for 1881 and 1884.

¹¹ One year only, 1895.

¹² See headnote.

¹³ Includes processing tax and for 1937 to 1940, taxes under Social Security Act, and taxes upon carriers and their employees.

¹⁴ Includes unjust enrichment tax.

¹⁵ Sales of public lands included with miscellaneous receipts; postal revenues and expenditures not available.

We the People

of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year in the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and seven Years of Citizenship of the United States, and who shall not, when elected, be seven Years an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, and three fourths of all other Persons bound to Service, five sixths of the Number of free Persons, and three fourths of all other Persons bound to Service, in each State, as the Census shall be taken. But no Representative shall have a greater Number than one for every thirty thousand Persons; and there shall not be less than thirty Members, nor a less Number than one for every State.

When vacancies happen in the Representation from any State, the Executive thereof shall issue Writs of Election to fill such Vacancies.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for a Term of six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Congress, they shall elect a President and Vice President, and elect a Speaker of the House of Representatives; and elect a President of the Senate, who shall be one of the Electors of the most numerous Branch of the State Legislature. The Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and seven Years of Citizenship of the United States, and who shall not, when elected, be seven Years an Inhabitant of that State in which he shall be chosen.

The Senate shall be organized in the same manner as the House of Representatives, and shall elect a President of the Senate, who shall be one of the Electors of the most numerous Branch of the State Legislature.

Section 4. The House of Representatives shall be composed of Members chosen every second Year in the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and the House of Representatives shall also be the Judge of the Elections, Returns and Qualifications of its own Members.

Section 6. The House of Representatives shall be composed of Members chosen every second Year in the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Section 7. The House of Representatives shall be composed of Members chosen every second Year in the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

The Constitution of the United States with the commerce clause highlighted, 1787.

Section. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Congress of the United States,

begun and held at the City of New-York, on Wednesday
the fourth of March, one Thousand seven hundred and eighty nine.

1. (2) to regulate the collection of the duties imposed by Law on the Luggage of Ships or Vessels, and on Goods, Wares, and Merchandises, imported into the United States.

Be it enacted by the Senate and House of Representatives of the UNITED STATES of America, in Congress assembled, That for the better regulation of the duties imposed by law on the bearing of Arms and Explosives and upon Goods, Wares, and Merchandises imported into the United States, there shall be established and appointed distinct Ports and Offices in manner following to-wit,

The State of New Hampshire shall have the right to include the town of Portsmouth as the sole port of entry and the town of Dover as the sole port of delivery only and all ships or boats bound to or from either of the said ports of delivery shall first come to enter and clear at Portsmouth, and when necessary to collect and discharge for the said district shall be appointed to reach at Portsmouth.

[illegible]

The Second Act of Congress created the U.S. Customs Service, 1789.



Thomas Jefferson, President, 1801-1809. The National Portrait Gallery, Smithsonian Museum.



James Madison, President, 1809-1817; author of the commerce clause, 1787. The National Portrait Gallery, Smithsonian Museum.



Otho Holland Williams, Collector, Port of Baltimore, 1791-94.



Benjamin Lincoln. Collector, Boston, 1783-1809.

George Washington President of the United States of America.

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING.

KNOW YE, That reposing special Trust and Confidence in the Integrity, Diligence and Discretion of Richard Taylor of Virginia I have nominated, and by and with the Advice and Consent of the Senate, Do APPOINT him Collector for the District of Louisville and do authorize and empower him to execute and fulfil the Duties of that Office according to Law; AND TO HAVE AND TO HOLD the said office, with all the Rights and Emoluments thereunto legally appertaining, unto him the said Richard Taylor during the Pleasure of the President of the United States for the Time being.

(L.S.)

IN TESTIMONY whereof I have caused these Letters to be made Patent, and the Seal of the United States to be hereunto affixed. GIVEN under my Hand, at the City of Philadelphia the Twenty first Day of March in the Year of our Lord one thousand seven hundred and ninety one, and of the Independence of the United States of America the Fifteenth.

G Washington
By the President.
Th Jefferson.

Commission for John Lamb, Collector, Port of New York, 1791.

Customs entry, Port of New York, 1792.

Entry of MERCHANDIZE imported by Francis Durand
in the Packet the Jean Jacques, Le Grand
Master, from Bordeaux
to New-York,

MARKS and NUMBERS.	PACKAGES and CONTENTS.	QUANTITY
N ^o . 34. A FD G	Three Casks flacet Containing together 165 Gallons. One Cask Brandy Containing 36 Gallons. J ^s Durand	
	For Ware of value 181 ^l 10 ^s 10 ^d 4 ^q 4 ^o 1 do Brandy 32 ^l	D C 18 10 3 60 18 10 10 4 4 0



Alexander Hamilton, Secretary of the Treasury, 1789-95.

the Bonds without the cargoes having been landed," in order to avoid open flouting of the embargo laws. In effect, in Maine and Massachusetts, collectors were conceding the game. Even permissiveness on a large scale did not prevent crowd actions, however.

Naval Captain William Bainbridge, posted at Portland, reported that, in October 1808, "an armed and riotous mob" threatened the lives of the officers in the customhouse. The collector himself described what happened: "The wharves were taken possession of by a large number of disguised and armed men, supposed to be one or two hundred and they loaded and carried out of the harbor two vessels." With some bitterness, collector Isaac Ilsey added, "I suppose that ere long Government will take some efficient measures to prevent these disgraceful practices." ¹² But Ilsey waited in vain.

So did his counterpart at St. Mary's, Georgia. This southernmost port of entry in the United States proved as troublesome to Jefferson and Gallatin as did the ports on the northern frontier. The collector there persuaded the Treasury Secretary and the President that "cotton at this moment is the great object." St. Mary's was the American port closest to the British West Indies and Spanish Florida, and so, Gallatin reported to Jefferson, "the system of illegal exportations is carried on the largest scale, and embraces all the sea-coast of Georgia." Baltimore collector James McCulloch reinforced this view, asking that stronger efforts be made to interdict trade along the whole southern coast, but at St. Mary's in particular. "Foreigners," McCulloch wrote, "speak a good deal of cotton lately," and St. Mary's was the key to smuggling "arrangements." ¹³

¹² Isaac Ilsey to William Bainbridge, November 1, 1808, and Bainbridge to Robert Smith, November 1, 1808, Captains' Letters, Navy Department Files, RG 45, National Archives; T. Webb to James Madison, November 6, 1808, *Microfilm Edition of the Papers of Albert Gallatin*, Prince, ed., roll 18; Isaac Ilsey to Daniel Ilsey, November 6, 1808, Albert Gallatin Papers, New-York Historical Society.

¹³ James McCulloch to Albert Gallatin, December 5, 1808, and Albert Gallatin to Thomas Jefferson, December 28, 1808, *Microfilm Edition of the Papers of Albert Gallatin*, Prince, ed., roll 18.

The Georgia port posed several problems. Small boats, for example, were employed to ferry cotton out to vessels waiting offshore; Jefferson's solution was to suggest the destruction of "all boats" in the area, a suggestion so absurd that it was ignored. Less absurd was McCulloch's advice that no vessel be permitted to leave port with an entirely black crew, "as the laws of Maryland and some other states" prevent them from testifying against ships' masters violating the embargo. Obviously, smugglers were recruiting crews made up entirely of free blacks with just this in mind. These almost farcical recommendations indicate the hysteria and frustration gripping everyone from the President down to the collector.¹⁴

The problem at St. Mary's was apparently not even resolved by a flotilla of naval gunboats dispatched to the area in the spring of 1808. Flotillas off Georgia, those operating out of Passamaquoddy, and those in the Port of New Orleans all reported the same problems: "Ships often escaped through the connivance of the customs agents themselves [or] masters put into foreign ports . . . claiming dire emergencies" offloading even as they established alibis. Lieutenant Samuel Elbert, the commander of the gunboats, was enjoined to work closely with the collector at St. Mary's, but to make sure never to violate "by any act whatever the acknowledged jurisdiction of Spain." Judging by the frustration evident in Washington almost nine months after these orders were drafted, prevention of smuggling by the use of gunboats off the Georgia coast proved as impossible as it did at Passamaquoddy and Portland.¹⁵

Nonetheless, Gallatin remained enthusiastic about the deployment of navy gunboats—small, swift-oared vessels mounting a cannon in the bow. Because of their success in curbing the Barbary pirates off North Africa early in Jefferson's administration, the Navy had built a large fleet. Gallatin wanted to use

¹⁴ Ibid.

¹⁵ Secretary of the Navy Robert Smith to Lieutenant Samuel Elbert, May 2, 1808, *The Naval War of 1812*, William S. Dudley, ed. (Washington, D.C.: 1986), vol. I, pp. 35-36.

Embargo and Nullification

them as revenue cutters and, when the Navy claimed it had too few men for such duty, he asked his customs collectors to recruit gunboat crews. This was an absurd suggestion, as several collectors and naval officers told the Treasury Secretary. Tensions between the Customs Service and the Navy remained a fact of life throughout the embargo period. Part of the Navy's problem was its unwillingness to enforce a law against American citizens; naval officers, according to one historian, tended to treat customs personnel with great arrogance, at least in the South.¹⁶

THE EMBARGO: ITS FINAL STAGES

Successively stronger embargo laws in 1808 so enlarged customs enforcement power that collectors no longer needed to obtain court warrants for searches and seizures, either at sea or on land. Discretionary authority proved to be a curse, however. Customhouses were still understaffed, and public hostility to the embargo was becoming more open. As the year progressed, customs collectors found themselves increasingly isolated and unpopular in their home towns, and subject to deepening executive and congressional criticism from Washington.

Some politically connected customs collectors refused to recognize the embargo and even let it be known that it would not be enforced in their districts. Joseph Whipple at Portsmouth, New Hampshire, was most open about it. And Providence collector Jeremiah Olney, a widely respected Jeffersonian Republican, resigned in protest to make his point; the embargo, he told

¹⁶For newspaper comment on Navy-Customs relations see the *Providence Gazette*, February 4, 1809; *Norfolk [Virginia] Gazette and Public Ledger*, November 16, 1808; Mannix, "The Embargo," pp. 251-53. For the sources of that tension, see Stephen Decatur to Robert Smith, August 9, 10, 13, 15, 26, September 1, 1808, John Rogers to Smith, July 5, 25, 1808, and passim, Captains' Letters, Navy Department Files, RG 45, National Archives; Albert Gallatin to Thomas Newton, November 29, 1808, Thomas Jefferson to Gallatin, October 5, 1808, and passim, *Microfilm Edition of the Papers of Albert Gallatin*, Prince, ed., roll 18.

Jefferson, was a failure.¹⁷ Olney had warned Gallatin early on that "if general and strong attempts should be made" to evade the embargo, "the collector will certainly be inadequate to that purpose." In order to "command obedience to the laws, it will require an armed force, stationed on the wharf, and a public armed vessel at the harbours a few miles below the town [of Providence], but these are not within my controul."¹⁸

Similar complaints mounted, particularly, but not exclusively from New England, as the first anniversary of the embargo approached at the end of 1808. In Baltimore, Collector James McCulloch wrote Gallatin listing the many seizures he had made and complaining that the subsequent prosecutions were bogged down in the courts. He added that, given the size of his staff, it was impossible to stop and search every outbound ship clearing his port. At the end of November, at about the time Olney was writing from Providence, McCulloch sent Gallatin a list of persisting deficiencies in the embargo legislation.¹⁹

Federalist Jedediah Huntington, the collector at New London, Connecticut, had been kept on by Jefferson because of his well-known Revolutionary service and his dominant role in the port town. He found the embargo a repugnant measure aimed at Federalist New England, but he did his best to enforce it at first, even though his efforts made him ever more unpopular. New London was a particularly difficult enforcement district. Not even a revenue cutter could effectively patrol Long Island Sound, given its size and the many small inlets and islands capable of sheltering smugglers. Huntington, however, relied on informers to provide direction for both his cutter and a naval gunboat seconded to his customhouse.

¹⁷ Albert Gallatin to Thomas Jefferson, May 23, 1808, January 10, 1809, Jefferson to Gallatin, February 22, 1809, Joseph Whipple to Gallatin, February 14, 22, 23, 1809, Levi Lincoln to Gallatin, January 30, 1809, *Microfilm Edition of the Papers of Albert Gallatin*, Prince, ed., roll 18. *Providence Gazette*, February 18, 1809; Mannix, "The Embargo," pp. 270-77.

¹⁸ Jeremiah Olney to Albert Gallatin, November 25, 1808, *Microfilm Edition of the Papers of Albert Gallatin*, Prince, ed., roll 18.

¹⁹ *Ibid.*, James McCulloch to Albert Gallatin, November 30, 1808, February 25, 1809.

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In one typical case, a shipment of embargoed cotton was stolen in December 1808. Customs Inspector Ezra Lee reported to the collector that "the man that I employed to give information in regard to that Cotton . . . sent me word that last Night the store that Contained it was Broke open and the whole of it taken off." Lee urged Huntington to try to intercept the cotton before it reached the "armed vessel that was lying off Duck Island" waiting to receive it. That proved impossible; the cutter and gunboat were elsewhere, and by the time they could be notified, the smuggler was long gone. It was a familiar story. When seizures were made, the goods were stored in warehouses that proved insecure, and seized goods often melted before the collector's eyes. Meanwhile, Huntington's strenuous efforts to enforce the law made him increasingly unpopular in a Federalist town. No wonder he finally refused to chase after will-o-the-wisps and by the end of 1808 had given up on active enforcement.²⁰

So did disgusted Collector Abraham Bishop at New Haven, as he reported on the fate of the sloop *Hope* in March 1809. Captured by a revenue cutter with smuggled goods, it was brought to the harbor and "her cargo and sails put into public store." The ship itself was placed under guard. The first night, however, the guards were driven off by a disguised mob, the ship was plundered, and the sloop was burned "to the water's edge." A grand jury concluded that nobody knew who had burnt the ship, so no bill of indictment was returned. Bishop was acerbic in his report, indicating that no reliance could be placed on State and local courts. "I have suffered . . . this nothingness," he wrote, "to pass without observation." The offenders, whoever they were, he added, were probably in "No man land."²¹ He resolved to worry less about evasions in the future.

²⁰Ezra Lee to Jedediah Huntington, December 27 and 31, 1808, "Correspondence 1803-1812, New London," Bureau of Customs Papers, RG 36, Regional Archives Branch, Federal Records Center, Waltham, Massachusetts.

²¹Abraham Bishop to Jonathan Law, March 11, 1809, Letters by Abraham Bishop, 1804-1816, Miscellaneous Manuscript Collections, Group 352, Series XV, Box 77, Folder 1602, Sterling Library, Yale University, New Haven.

Things were no better a little further east, at Newport. One of the senior collectors in the service, William Ellery, also had his hands full in a port town hostile to enforcement. A common ruse was exposed on one of the few occasions when an offender was caught. On November 21, 1808, the schooner *Polly*, cleared for coasting at Newport, was libeled "for taking on board a quantity of flour in the District of Maine." Instead of returning to Newport with its complete cargo, however, the *Polly* made for Nova Scotia, where it sold part of the shipment and then returned to Newport with a light load and tried to clear customs. On this occasion *Polly* did not make it, although she apparently had many times in the past. The vessel was ultimately forfeited and sold at auction; its owners also forfeited the bond required for the original clearance.²²

These were not isolated occurrences. The *Neptune* out of Kingston, Rhode Island, cleared in ballast for Maine, "purchased a Load of Salt and carried it to Havana." The schooner returned to Kingston six weeks later, still in ballast, claiming it had "sprung its foremast" and could not complete the trip to Maine. Nobody at the customhouse believed that story, and the ship was libeled.²³

Another vessel out of Sag Harbor, New York, placed its bond for a coasting trip, loaded up with Long Island produce, and claimed to be making for Egg Harbor, New Jersey, about two days' sail. It returned five weeks later claiming that as "they proceeded immediately around Montauk," they "were blown off course" and had to jettison the cargo! The story was so obviously unbelievable, given the time lapse, that when the owners could not come up with any papers indicating clearance from another port, even in ballast, the ship was libeled.²⁴

Other problems attended this enforcement crisis. Morale dropped to a point almost—but not quite—as low as it had been

²² William Ellery to Albert Gallatin, December 3, 1808, *Microfilm Edition of the Papers of Albert Gallatin*, Prince, ed., roll 18.

²³ Ibid.

²⁴ Ibid., H.P. Dering to Albert Gallatin, December 1, 1808.

during the American Revolution. Complaints denouncing customs collectors who enforced the embargo were routinely ignored in Washington. Occasionally, however, disgruntled politicians used the embargo issue to try to undercut an opposing collector. For example, a local official at Lake Champlain charged chief customs officer Melancthon Woolsey with failing to enforce the law. Treasury Secretary Gallatin responded by sending the accuser copies of Woolsey's reports on his efforts in what may have been the toughest of all customs districts. In an accompanying letter Gallatin wrote the accuser that "everything was fairly conducted and the impression of his [Woolsey's] good conduct was such that on two occasions I was directed by the President to assure him that it was highly approved." "You must be sensible," Gallatin concluded coldly, "that unless facts are stated which will directly apply," rather than the "vague charges" so far received, it would be better to stop writing.²⁵

Not all collectors were so ably buffered from embargo-related tensions, however; many were sued personally for their enforcement of the law. David Gelston, Jeremiah Olney, Benjamin Lincoln, Benjamin Weld, Joseph Otis, and Edward Pope were only a few of those subjected to the pressures of potential personal liability. In these matters Treasury and the President were less forthcoming, and as often as not collectors were left to defend themselves. A "breakdown of understanding, confidence and communication" between Gallatin and his senior customs personnel inevitably resulted.²⁶

²⁵ Ibid., Albert Gallatin to Nathan Wilson, December 5, 1808.

²⁶ For the dilemma of litigation in which customs collectors found themselves, see Albert Gallatin to Thomas Jefferson, July 29 and October 12, 1808, Gallatin to Samuel Tredwell, August 17, 1808, in Papers of Thomas Jefferson, Library of Congress; David Gelston to Gallatin, November 8, 1808, Papers of Albert Gallatin, New-York Historical Society; *Microfilm Edition of the Papers of Albert Gallatin*, Prince, ed., roll 18, passim.

For indications of the breakdown of communication between Gallatin and his collectors, see Gallatin to William Ellery, July 23, 1808, Gallatin to Samuel Latta, July 30, 1808, Gallatin to Lemuel Trescott, July 25, 1808, *Microfilm Edition of the Papers of Albert Gallatin*, Prince, ed., roll 18; Gallatin to Jefferson, August 5, 1808, Gallatin to Samuel Tredwell, August

In a nutshell, although collectors knew their job was to press the hated embargo on a reluctant community, they nevertheless tried to avoid trouble, either by failing to enforce rigorously or by committing themselves to defending citizens against government. Caught between government and community, the collectors' corporate morale eroded badly.

Two signs of dissipating esprit in the Customs Service suggest the residual impact the embargo had on morale. First, collectors saw that they could avoid headaches if they just stopped writing to Washington about their enforcement problems. Gallatin noticed this, and at the end of 1808 singled out three glaring examples; he told Comptroller of the Treasury John Steele that the customs officers at Sag Harbor, New York; Perth Amboy, New Jersey; and Nantucket, Massachusetts, had all failed to keep Washington up to date on difficulties in their districts. Second, Gallatin realized that he was having trouble finding help; by late 1808 he disclosed to confidants that for the first time since the birth of the Republic, "government found it impossible" to fill vacancies in the service.²⁷

Declining income played its part in making Customs look less attractive. Detailed tonnage figures for the port of New Haven, Connecticut, reveal that the volume in 1808 was only 60 percent of what it had been in 1806, the last full year without an embargo; 892 tons had passed through the port in the former year, 529 tons in the latter. In practical terms this meant less income from fees and more layoffs of customs employees who had thought their jobs secure. Nor was the nationwide loss of tonnage and income a temporary phenomenon, for commerce

17, 1808, Papers of Thomas Jefferson, Library of Congress; Mannix, "The Embargo," pp. 183-89.

²⁷ Albert Gallatin to John Steele, December 1, 1808, and January 6, 1809, Gallatin to James McCulloch, December 20, 1808, Henry Dering to Gallatin, December 1, 1808, Silas Crane to Gallatin, November 28, 1808, John Enalls to Gallatin, December 15, 1808, Gallatin to Francis Hawks, January 31, 1809, and Hart Massey to Gallatin, February 26, 1809, *Microfilm Edition of the Papers of Albert Gallatin*, Prince, ed., roll 18; Gallatin to Jefferson, January 19, February 2, and 4, 1809, Thomas Jefferson Papers, Library of Congress.

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remained depressed after James Madison's accession to the Presidency; his virtual embargo replaced Jefferson's, and then the War of 1812 perpetuated the commercial depression.²⁸

Even southern ports, not accustomed to large-volume foreign exchange, suffered because of the mandated end to the slave trade in 1808. The embargo, by an accident of timing, overlapped with the closure of the slave trade; so there were problems with enforcing the ban on the slave trade from the beginning. Because of the complexity of embargo enforcement by then, Gallatin instructed his collectors not to try to enforce the anti-slave trade ban. This proved disastrous, for it fed the widespread flouting of the Constitution long after the official closing of the slave trade.²⁹

For years after this false start, collectors were reminded to enforce the prohibition against importing slaves, which obviously meant that the ban was honored more in the breach than the observance. In 1818 New Orleans Collector Beverly Chew reported, for example, that "no officers of the customs alone can be effectual in stopping the slave traffic" through the Gulf of Mexico. The ease of secreting illegally imported blacks in the bayous and the lack of personnel to protect even those who were rescued caused Beverly Chew to warn that "captured slaves ought not to be brought into this port" but sent elsewhere where they could be better protected. As late as 1819, Congress itself refrained from demanding strict compliance with the ban on the slave trade.³⁰

²⁸ Custom House Accounts 1793-1821, New Haven Harbor Collection, No. 57C, Box 1, Folder 1, New Haven Colony Historical Society, New Haven, Connecticut; Abraham Bishop to Jonathan Law, June 10, 1809, Letters by Abraham Bishop, 1806-1816, Miscellaneous Manuscript Collections, Group 352, Series XV, Box 77, Folder 1602, Sterling Library, Yale University, New Haven, Connecticut. A similar drop in tonnage occurred at Salem, Massachusetts, where the collector reported a 50 percent decline from 1807 to 1808. See *Digest of Duties*, 2 vols. (manuscript), Peabody Museum, Salem, Massachusetts.

²⁹ Albert Gallatin to Thomas Bound, December 5, 1808, James Madison Papers, Library of Congress.

³⁰ Beverly Chew to William H. Crawford, April 17, 1818, and Report of a House Inquiry into the Act of 2 November, 1807, noting the pending end of the slave trade, contained in *Extracts from Documents in the Department of State, of the Treasury, and of the Navy, in Relation to the Introduction of*

The fallout from the embargo, from this perspective alone, ran very deep. Not only was the U.S. Customs Service placed in jeopardy by its unwanted mission to enforce a bad law, but the economic difficulties for the nation deriving from the law were, so far as slavery was concerned, matched by social and political pitfalls, as the nullification controversy of 1832-1833 makes clear.

NULLIFICATION AND THE CUSTOMS SERVICE: THE ISSUE

U.S. protectionist policy between 1816 and 1832 crystallized for the South the degree to which the North and the developing West were willing to encourage manufactures at the expense of agriculture, via increasingly higher tariffs. The South was locked into the slave-dependent husbandry of cotton, and lacked the population and transportation network to develop an industrial base; to an increasing extent after 1816, and particularly during the rancorous Missouri controversy of 1819-1820, the issue became the future of slavery. So behind the heated emotions attaching to the nullification contretemps lay the specter of the "peculiar institution." At a time when the rest of the nation was freeing its slaves via gradual emancipation, the South increasingly relied on slave labor to undergird its economy. The nullification confrontation was an early test of the will of the South to resist change; among other things it was a last-gasp effort to preserve states' rights, and a test of the ability of a single state to roll back national economic policy. The Charleston customhouse was the center of the confrontation.

The constitutional components of nullification are familiar. The Tariff of 1828—the "Tariff of Abominations"—had elevated import costs to an unconscionable level. The tariff was particularly destructive to the southern cotton economy because it raised significantly the prices of imported manufactured goods on which

Slaves into the United States (Washington, D.C.: 1819), Imprint Collection, Beinecke Library, Yale University, New Haven.

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the South depended, even as it posed the possibility that reciprocal tariffs in Britain would undermine cotton profits. Southern leaders saw the tariff as unconstitutional because it rode roughshod over states' rights. From the beginning, South Carolina was in the vanguard of protest, assuming incorrectly that the rest of the South was right behind it. Although sympathy for South Carolina's resistance ran high in the South, most southern leaders concluded that South Carolina went too far when it prevented enforcement of the Tariff of 1828 at its ports.

Before Jackson's landslide reelection in 1832, the President and Congress made an effort at conciliation by slightly reducing import duties in that election year. All the states of the South but South Carolina accepted the intent, but increasingly extreme leaders in that State saw the new tariff as a ruse. It may have lowered tariffs a little, but it also fixed permanently a protectionist policy, and the state's leaders concluded it could not trust fellow southerner Andrew Jackson to return to free trade. "Old Hickory's" 1832 victory provoked South Carolina to act. On November 24, a state convention adopted an ordinance nullifying the Tariffs of 1828 and 1832. On November 27 the state legislature passed a law implementing the ordinance by providing for armed resistance.

These events infuriated Jackson. In particular he took umbrage over the threat to the Federal customs revenues, citing it in his own response to the November 1832 statement of nullification. South Carolina had explicitly thrown down the gauntlet to the President by warning Washington "that any act authorizing the employment of a military or naval force against the State of South Carolina . . . or any act abolishing or closing the ports of this State . . . or otherwise obstructing the free ingress or egress of vessels to and from the said ports" will be declared "null and void." Jackson's perception was that the nullifiers had pushed him into a corner, rendering further compromise impossible, and he ordered a military alert at Forts Moultrie and Sumter in Charleston Harbor. In a proclamation the President justified the use of force by noting, "I consider . . . the power

to annul a law of the United States, assumed by one state, incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorized by its spirit . . . and destructive of the great object for which it was formed.”³¹

In December 1832 the situation further deteriorated. Jackson issued yet another *Proclamation to the People of South Carolina* calling nullification an “impractical absurdity” and warning the State that “disunion by armed force is treason.” South Carolina responded defiantly via legislative resolutions, and the Governor issued a counterproclamation. Vice President John C. Calhoun, a South Carolinian but not originally a nullifier, felt that he too was backed into a corner. To save his power base he took the fateful step of resigning the Vice Presidency in order to take a seat in the U.S. Senate. There he emerged for the next 15 years as the spokesman and leader of the most extreme southern political interests.³² The drama that followed the Vice President’s resignation was played out in the first months of 1833, with Charleston Customs Collector James R. Pringle in the forefront.

NULLIFICATION AND THE CUSTOMS SERVICE: THE PEOPLE

As the November 1832 Presidential election approached, Jackson’s South Carolina confidants were extremely worried about the loyalty of the Charleston customhouse. Congressman Joel Poinsett, the leader of the state’s Union faction, confided his deep concern to the President. “The custom house where the battle will be fought is crowded with Nullifiers,” he wrote Old

³¹South Carolina’s Ordinance of Nullification and its supplementary legislative statutes can be found in Senate Document 30, 22d Cong., 2d Sess. (January 16, 1833), *Annals of Congress*. Jackson’s Proclamation and other presidential documents relating to nullification can be found in *A Compilation of the Messages and Papers of the President*, James D. Richardson, ed., 11 vols. (Washington, D.C.: 1897-1909), vol. II, pp. 610-32, 634-58, especially pp. 614, 626, 629.

³²Ibid.

Hickory in October, "ought they not to be removed?" A month later he reiterated his fears: "In the Custom house there are many violent nullifiers"; this time he furnished a list.³³ Poinsett's list was right on the mark, save in one case. As the administration would learn in the ensuing months, the one person they need not have worried about was Collector James R. Pringle.

Appointed by James Monroe in 1820, Pringle enjoyed prosperity in his post for a dozen years before he was placed squarely on the firing line. Hedged in closely by the nullification ordinance and its supplementary legislation, so that anything he did to collect the tariff revenue would be construed in the state courts as illegal, he was also under extreme pressure from the federal government to enforce the tariffs. The strain to which he was subjected, according to one historian, was heightened by his ownership of "hundreds of slaves scattered throughout the state who could be taken for the asking" by state authorities should he fail to toe the line and obey nullification statutes. Inasmuch as the new local laws made him personally responsible for losses to merchants for payment of customs duties, Pringle's "property" could be seized and the proceeds of a forced sale awarded to those South Carolina importers now "released" by state law from the payment of import fees. "Collector Pringle was in danger of being thrown in jail for any attempt to collect the customs, while merchants were freed of all responsibility for defying him."³⁴ Governor James Hamilton believed at the beginning of 1833 that his new state laws would "render it utterly impossible to collect within our limits, the duties imposed by the protective tariffs thus nullified."³⁵

³³ Joel R. Poinsett to Andrew Jackson, October 16 and November 16, 1832, *Correspondence of Andrew Jackson*, John Spencer Bassett, ed., 7 vols. (Washington, D.C.: 1926-1935), vol. IV, pp. 481, 487.

³⁴ Leonard White, *The Jacksonians: A Study in Administrative History, 1829-1861* (New York: 1954; 2d ed. 1965), p. 514; William H. Freehling, *Prelude to the Civil War: The Nullification Controversy in South Carolina, 1816-1836* (New York: 1965), pp. 272-73.

³⁵ Senate Document 30, 22d Cong., 2d Sess., January 16, 1833, *Annals of Congress*.

Jackson was determined to suppress what he saw as a revolt. "In the city of Charleston," he said in his message to Congress of January 16, 1833, "within a collection district, and a port of entry, a rendezvous has been opened for the purpose of enlisting men" to oppose collection of federal customs duties. "Thus South Carolina presents herself in the attitude of hostile preparation," he concluded, "and ready for military violence if need be to enforce her laws for preventing the collection of duties within her limits." That was intolerable. To meet the threat, "instructions were accordingly issued on the 6th of November [1832] to the collectors in that State, pointing out their respective duties and enjoining upon each a firm and vigilant but discreet performance of them in the emergency."³⁶ The President explicitly quoted Joel Poinsett in a confidential letter to Martin Van Buren, repeating the Congressman's warning that "nothing but force will stop the career of these madmen in the south."³⁷

The key to enforcement was the Charleston collector. Pringle proved able to withstand the local pressure, but his colleagues in the customhouse could not. One of these was Jackson's old friend and compatriot in the War of 1812, Captain William Laval, now naval officer in the port. "He has proved extremely ungrateful to you," Poinsett reported to the President, pointing out "the urgent necessity of his removal." A kind way to do this, the Congressman added, was to "offer him a Place in New Orleans." Jackson finally concurred that Laval's transfer "would be useful to the cause of the Union." He took Poinsett's advice.

Word got around that openings were being created by removals and transfers of unreliable officers, and Poinsett was quickly perceived as the man with whom to talk. Lieutenant Josiah Sturgis, second in command of the Charleston revenue cutter, wrote to Poinsett that the commander of the cutter

³⁶ Andrew Jackson to Congress, January 16, 1833, *Messages and Papers of the President*, Richardson, ed., vol. II, p. 612.

³⁷ Andrew Jackson to Martin Van Buren, December 25, 1832, *Correspondence of Andrew Jackson*, Bassett, ed., vol. IV, p. 505.

Embargo and Nullification

(Sturgis' commanding officer) was as untrustworthy as Laval in this crisis and should be replaced, and that there was no one more loyal for the job than himself. "As regards Nullification," Sturgis wrote for relay to the President, "I beg to be understood I would not wish a transfer from here so long as one disunion Man exists. Not even to Command fifty cutters." But he would, he hinted, settle for command of one—in Charleston harbor, so that, "should the time ever arrive which God forbid, when the Collector of the port shall be prevented from performing his official duty by disunion Men, I trust I may be one among many to rally to his defense." Sturgis was shortly thereafter named to command the cutter.³⁸

NULLIFICATION AND THE CUSTOMS SERVICE: THE RESULT

President Jackson took a direct and personal interest in customs enforcement in this crisis, just as Jefferson had a quarter-century before. Day-to-day oversight, however, remained in the hands of Treasury Secretary Louis McLane, whose close attention to developments in Charleston paralleled Albert Gallatin's role in the embargo confrontation. Jackson and McLane in 1833 used two direct emissaries to maintain contact with Pringle; initially Congressman Joel Poinsett and later George Breathitt established ways to bypass the Charleston Post Office in communicating with Washington, D.C. Because the Charleston Post Office also collected large sums of federal money, it, along with the customhouse, was ordered into the state orbit, so the mails were not secure for the use of the Union party. During the crisis, communications between Charleston and Washington were handled either overland via messengers on horseback or by

³⁸For Laval's transfer, see Joel R. Poinsett to Andrew Jackson, November 16, 1832, *Correspondence of Andrew Jackson*, Bassett, ed., vol. IV, p. 487. For Sturgis's claim to a command, see Josiah Sturgis to Poinsett, January 25, 1833, vol. 7, folder 7, Joel R. Poinsett Papers, Historical Society of Pennsylvania, Philadelphia.

Navy picket boats traveling the coastal waters. Poinsett became so visible that his role as liaison was soon compromised, and so Breathitt was dispatched by Jackson, ostensibly as a postal inspector. Since Breathitt was the brother of the governor of Kentucky and a loyal Jacksonian who was unknown in South Carolina, the states' rights forces never ferreted out his real mission—"to spy on the nullifiers."³⁹

As the confrontation deepened, Jackson became more involved. He asked Poinsett quietly to introduce Breathitt to Pringle as the President's personal representative. Breathitt's first order of business was to report on the loyalty of the crew of the revenue cutter in Charleston Harbor. He was then to inspect the offshore facilities available for emergency use by the customhouse, if it was forced to evacuate the waterfront. "I . . . wish this to be done merely as a stranger having curiosity to examine your capacity for Defence and facilities for command," Jackson wrote Poinsett. Old Hickory also asked Breathitt, through Poinsett, "to obtain the real intentions" of the nullifiers. Did they mean "really to resort to force to prevent the collection of the revenue?" Finally, he wanted the Kentuckian to ascertain yet again if any "in the Customs . . . belong to or have adhered to the nullifiers." By now, Jackson believed that Pringle was loyal, and told Poinsett to tell to Pringle that "four thousand stand of muskets with corresponding equipments have been ordered to Castle Pinckney; and a sloop of war with a smaller armed vessel will reach Charleston harbor in due time." Pringle was also to commission a picket boat for communication with Washington or to build one quickly, until a naval vessel could arrive to assume that duty.⁴⁰

Secretary of the Treasury Louis McLane was using the same messengers to transmit rapid-fire instructions to Pringle. Remove

³⁹ _____ to Joel Poinsett, January 23, 1832, Joel Poinsett Papers, vol. 7, folder 3, Historical Society of Pennsylvania, Philadelphia, Pennsylvania; and Freehling, *Prelude to the Civil War*, p. 265.

⁴⁰ Andrew Jackson to Joel Poinsett, November 7 and December 2, 1832, vol. 7, folders 5 and 6, respectively, Joel R. Poinsett Papers, Historical Society of Pennsylvania, Philadelphia.

anyone remaining in the customhouse, “concerned in or advocating the meditated resistance to the Laws of the Union,” he told Pringle in November 1832. “Customs should be filled by men attached to the Union and faithful to their duty,” he added. Pringle asked for and got a Presidential order “for your official and personal accommodation at either of the forts” (Moultrie or Pinckney) in the harbor, should he or the customhouse in its entirety need refuge. “It has been left to your option,” McLane wrote to the collector, “to remove the Customs house to Castle Pinckney or to Fort Moultrie.”⁴¹ McLane added a note “expressing confidence regarding the firmness and patriotism of the collector.” Pringle was to enforce the tariff and protect customs revenue, but he was to do his best to “avoid apprehended violence.” The collector was also to inquire about his counterparts at Georgetown and Beaufort, South Carolina, “regarding their fidelity to the Union,” and to provide any “information Relative to a Secession Ordinance by the South Carolina Convention.”⁴² Comprehensive precautions like these helped to defuse the expected explosion.

The ineptitude of the nullifiers, as well as the executive action in Washington, helped to isolate the “disunion” forces in South Carolina. The rebels’ schemes to evade the galling customs duties sometimes reached preposterous levels, making this serious rebellion something of a local joke by the beginning of 1833. The revolt lost even more steam when the nullifiers held a mass meeting in Charleston on January 21 to decide future strategies. There they organized “The Free Trade Importing Company” to bring in goods from abroad without paying the tariff. Governor James Hamilton made a major gaffe: He announced that he had already sent his rice crop to Havana to be exchanged for sugar. He would, he said, permit his sugar to be placed in the customs

⁴¹ Louis McLane to James Pringle, November 19, 1832, January 17 and February 8, 1833, and *passim*, “Correspondence of the Secretary of the Treasury with Collectors of Customs, 1789–1833,” Record Group 56, Microfilm Publication No. 178, roll 32, National Archives.

⁴² *Ibid.* See also House Executive Document no. 45, 22d Cong., 2d Sess. pp. 92–99, *Annals of Congress*.

warehouse until the crisis was resolved. He told the crowd that "he knew that his fellow citizens would go even to the death with him for his sugar." Within days the Unionists in Charleston minted the raucous slogan "even to the death with Hamilton for his sugar."⁴³ In the pre-Civil War South, references to "sugar" had a sexual connotation, thus the play on words; the governor was known thereafter as "Sugar Jimmy." The belly laugh the city shared over this went far toward erasing local tensions.

By late February and March, 1833, the nullifiers had reached some sobering conclusions. They recognized that after some purges the customhouse under James R. Pringle was unshakably loyal to Washington. They also realized that the offshore federal forts and additional revenue cutters made it strategically impossible for the States' Rights Party to prevent collection of the revenue without coercing merchants and shippers to cease to use the port entirely. The Force Act of 1833, moreover, proved to them that the President was personally and institutionally committed to ending the rebellion by any means. Perhaps most important, the nullifiers realized that they could not count on more than lipservice from any other southern state. South Carolina stood alone in this crisis. Recognizing there was no way to win, the state accepted a face-saving token reduction of the tariff in 1833 and ended its resistance to customs enforcement.

Twice in a quarter-century the U.S. Customs Service had been thrust into the center of a national crisis. In both instances, despite the intense pull of local loyalties on the collectors and customhouses, the service as a whole had remained committed to enforcing national policy. Neither Jefferson nor Jackson questioned its ability to do so. The Customs Service had twice found itself understaffed and underfinanced, yet compelled to bear the brunt of enforcing badly drawn legislation. These two occasions were the first tests, under the Constitution, of the political loyalty and professional commitment of Customs in the pressure cooker of national confrontation—but they were by no means the last.

⁴³Freehling, *Prelude to the Civil War*, pp. 288-89.

Chapter IV

CUSTOMS IN THE AGE OF JACKSON, 1825-1850

Washington, D.C., almost recklessly disregarding the evident effects of the rapid growth of its civil service in the Age of Jackson, perpetuated a nonpolicy that really had begun with the Jeffersonians a generation earlier. Nowhere were the results more catastrophic than in the mighty Port of New York. The volume of goods passing through that harbor and the dynamic increase in customs personnel simply magnified the corruption possible in the nation's largest city, although the same disease attacked smaller customhouses as well. Dishonesty was perhaps the inevitable outgrowth of both the failure to reform government administration, on the one hand, and the willingness to allow politics to take over the civil service, on the other. If New York is an example of the first, Nathaniel Hawthorne's experience as surveyor of customs in Salem, Massachusetts, illustrates the second. Both places show however, that the Customs Service in the Jacksonian era was nothing if not colorful.

COMMUNICATIONS AND ADMINISTRATION

Andrew Jackson had inherited a Customs Service that had not kept up with the times. The Virginia Presidential dynasty had done virtually nothing to improve communication between Washington and the ports of entry, or to solve the problem of fiscal accountability on the part of the Customs Service. The

Jeffersonians also perpetuated the reliance on political criteria for office holding that, under Old Hickory's aegis, became a full-blown spoils system—one built primarily on the back of the Customs Service, which had by far the greatest number of federal jobs to hand out. But corruption plagued the Jacksonians far more than it had the Jeffersonians. Both massive graft and misuse of power in New York and elsewhere in the 1830's and 1840's accompanied this new and highly politicized growth. Politicization and peculation, in fact, as the Jacksonian period demonstrated all too well, went hand in hand. In a Service that probably numbered 5,000 outside the District of Columbia in 1831, and perhaps 8,500 in 1841 (New York City alone would soon claim 861 employees), politics, lack of communication, and an absence of financial accountability combined to take on the proportions of an unredressed major national dilemma.¹

The Customs Administrative Act of 1799 completed the paper organization of the Customs Service begun a decade before, and on paper it looked fine. The act, however, did not address the functional realities just described. Only one half-hearted and unsuccessful effort at reform occurred hard on the heels of the first protective tariff of 1816. In 1817 Congress took a quick look at communications and fiscal accountability, noted flaws—and did little.² The administrative act of that year did strengthen communication somewhat, but it did nothing to ensure that the reports of the collectors were accurate and reflected financial reality. And of course, without Presidential and party forbearance, nothing was done about removing politics from federal appointments.

The relative failure of 1817 contributed to more than a half-century of corruption that began with Jackson's spoils

¹U.S. Department of Commerce, *Historical Statistics of the United States, Colonial Times to 1957* (Washington, D.C.: U.S. Government Printing Office, 1957), p. 710; House Executive Document 3, 35th Cong., 2d Sess. (November 22, 1858), *Annals of Congress*, pp. 240-59.

²There is a good account of the effort and failure in Leonard White, *The Jeffersonians*, 173-82.

system around 1830. The fact that the Customs Service functioned well in most places—and it did—was a minor miracle owing nothing to Congress and the executive branch, and a great deal to the esprit in the ranks, and to the presence of occasional whistle-blowers. Part of the problem was that Customs lacked leadership. It was in 1830 what it had been in 1790, an underadministered arm of the Treasury Department. Between the time Albert Gallatin left office in 1817 and the arrival of the Jackson administration more than a decade later, Treasury “had no doctrine of sound administrative practice,” as Leonard White has written, and “no means of impressing its views on other departments or agencies.”³ Customs circulars dealing with a variety of specialized problems and occasional national crises came directly from the Treasury Secretary for the entire Age of Jackson just as they had in 1789, when Hamilton presided over a much smaller operation. Thus during the Canadian-American border crisis of 1837–38 as well as during the Mexican War, the ranking Cabinet officer had to deal specifically with administrative questions involving cutters, reporting procedures, matters of appraisal and underevaluation, and even violations of border neutrality.⁴

The fact that the Customs Service had to rely solely on the leadership of an overburdened Secretary of the Treasury, no matter who the incumbent, generated serious oversight problems. The original legislation of 1789 established that pattern in an era when the nation was small and customs problems were almost entirely maritime. Subsequent legislation did not alter the Secretary’s leadership role until 1849, when the office of Commissioner of Customs was created. Until that time the Treasury Secretary acted as the “central communications control” from whom all direction flowed.

³Leonard D. White, *The Jacksonians: A Study in Administrative History, 1829–1861* (New York: 1954, 2d ed. 1965), p. 164.

⁴See the Treasury Circulars to Customs Collectors, arranged chronologically, Customs Service Archives, U.S. Customs Service Headquarters, Washington, D.C. See particularly the collection covering the years 1830 to 1848.

The Treasury Secretary corresponded daily with the collectors and reminded them of the Presidential authority under which he acted. In Jackson's first months in office, Treasury Secretary Samuel Ingham wrote the collectors that the President held the customs officers "rigidly responsible . . . in detecting and prosecuting those who may be engaged in violating the Revenue Laws." But, Ingham subtly reminded his charges, he was in control, for "I shall consider it my duty to report to him in every case that shall come to my knowledge" in which a collector is derelict in his duty.⁵ This line of communication was workable to a limited extent in the simpler era of the 1790's, but it had ceased to work well by the time Jackson took office.

For one thing, the Customs Service of the 1830's was responsible for extensive land borders in the North, Northwest, and Southwest, a responsibility that did not exist in 1799, when the last major administrative reform took place. Second, the Service directed an ever-expanding fleet of revenue cutters. The fleet, which had numbered only 10 at the end of the 18th century, had expanded significantly during the era of the embargo and afterward, as we have seen. Third, Customs was expected to ward off growing corruption with a shrinking budget and haphazardly assigned secret agents (called field agents, confidential agents, and even "aids to the revenue" at different times during the era ending in 1850). Finally, the positions of inspector and naval officer were never fully developed in this period. Inspectors were paid \$2 a day until 1816, when they were raised to \$3. Given their increasing responsibilities in the act of 1799, per diem payments did not provide the continuity necessary to make the position work as it was intended.⁶

All these problems mirrored the weaknesses in the position of naval officer of customs, a position meant to act as a check on

⁵Michael N. Ingrisano, Jr., *A History of Enforcement in the United States Customs Service 1789-1875* (Washington, D.C.: 1986), chapter 3, pp. 15, 35.

⁶Ibid, chapter 2, pp. 2, 19, 23ff; chapter 3, pp. 3, 4, 14, 15, 18ff, 35; chapter 4, pp. 1, 2, 8ff, 12ff.

the fiscal integrity and administrative competence of the all-powerful collector. The naval officer was supposed to be the “watchdog” of the collector’s accounts and the internal “auditor” on the spot. That office existed in all major ports of entry. The position was created in 1789 and clarified in the act of 1799, but clearly it was outstripped by both the size and the complexity of the largest ports in the Age of Jackson, and the political realities imposed on the civil service in general in this era. Events in New York would make this clear enough.⁷

Only in 1849 did Congress create the position of Commissioner of Customs, with direct responsibility both for administering the agency and for enforcing fiscal integrity.⁸ An 1842 congressional investigating committee triggered this reform by condemning the Jacksonian system of accountability, a system inherited from the past. Congress in 1817 authorized the Comptroller of the Treasury to oversee the collector’s accounts but left all other administration in the hands of the Treasury Secretary. Because the Comptroller in turn was “entirely subject” to the Treasury Secretary’s control, the former was infected with the need to take into account political realities in reviewing accounts. The cases of the New York City Collectors Samuel Swartout and Jesse Hoyt illustrate these weaknesses all too well.⁹

THE NEW YORK CITY CUSTOMHOUSE

President Andrew Jackson ignored all kinds of advice in order to appoint Samuel Swartout the collector of customs at New York City. On paper, it looked to be a fine appointment. A descendant of a colonial Dutch family, part of the New York

⁷Ibid., chapter 3, pp. 18–19.

⁸Michael N. Ingrisano, Jr., “The First Commissioner of Customs,” *Customs Today* (Winter 1985), p. 36. The first Commissioner was Charles W. Rockwell of Connecticut, who functioned passively at best in the newly created post.

⁹House Report 741, 27th Cong., 2d Sess. (May 23, 1842), p. 11, *Annals of Congress*.

City gentry, and a friend of the President, Swartout strongly supported the Jackson movement in the city and state. By the time Jackson took his oath in 1829, the New York collectorship was considered the best plum on the patronage tree. The port handled two-thirds of all imports into the United States, and men far less enterprising than Swartout saw that there was big money to be made in the customhouse.

Swartout's nomination appalled Secretary of State Martin Van Buren, one of Jackson's closest confidants and the Democratic party leader in New York. The appointment "would in the end be lamented by every sincere and intelligent member of your administration," he told the President.¹⁰ Jackson snapped, "None have impugned his integrity or honor. He is reputed to be poor, but as an honest man is the noblest work of God, I cannot recognize this as an objection to any man."¹¹ There is no record of Jackson's response in 1838, while in retirement at the Hermitage, on learning from Felix Grundy that Swartout had fled to England with vast sums of public money.¹²

Van Buren was not alone in worrying about the future of the Nation's largest customhouse. Shortly after Swartout's nomination to the Senate, New York Congressman C.C. Cambreleng contended, "I do not know a man less fitted to be entrusted with such vast discretion and authority."¹³ Within months of Swartout's confirmation, Jackson's first U.S. Attorney for the Southern District of New York, which encompassed the city, expressed his fears. Swartout, James A. Hamilton wrote in his diary, "was so entirely ignorant of the laws which regulated his duty" that he needed daily advice. Hamilton recounted an incident he wit-

¹⁰ *The Autobiography of Martin Van Buren*, John C. Fitzpatrick, ed., American Historical Association *Annual Report*, 1918, 2 vols. (Washington, D.C., 1919), vol. II, p. 267.

¹¹ *Ibid.*, 268.

¹² Felix Grundy to Andrew Jackson, November 13, 1838, *Correspondence of Andrew Jackson*, John Spencer Bassett, ed., 7 vols. (Washington, D.C.: 1926-1935), vol. V, pp. 569-70.

¹³ C.C. Cambreleng to Martin Van Buren, April 15, 1829, Martin Van Buren Papers, Library of Congress.

nessed while waiting for the collector at the customhouse. He watched, Hamilton later wrote, as a clerk wrote out a check for \$5,000 to Swartout's personal account. Swartout came into the room, "taking his accustomed seat at the table, he read the check, endorsed it, and looking around the circle of persons standing outside the rail, went over to a gentlemen [Swartout's brother]" and "delivered the check to him." This was in 1830, eight years before the discovery of vast corruption. Hamilton said he wrote of the incident to the President, but the collector explained it away to Jackson's satisfaction.¹⁴

Neither Congress nor the Treasury Department probed the accumulating evidence of corruption until Swartout took his new fortune to England in 1838. Philip Hone, a keen observer of his times, noted in his diary entry for December 26, 1838, that a "stupendous defalcation had taken place" in the customhouse. Hone, who in a few years would himself become a naval officer of customs at the port, concluded that what he had heard was "the most appalling account of delinquency ever exhibited in this country, and no man of common sense can hold the Treasury Department innocent in the affair. If they had not sense enough to discover and check an evil of this magnitude," he wrote of Treasury officials, "they ought to have been turned out in disgrace; if they had and did not do it they ought to be hanged." ¹⁵

It took a congressional investigation to uncover the full extent of Swartout's embezzlement—at least a quarter-million dollars. By that time, James Hamilton's recently appointed successor, William Price, had joined Swartout in London with another \$80,000 in public funds.

The collector had been sophisticated. He collected fines and forfeitures, reported them quarterly, and then pocketed a por-

¹⁴ *Reminiscences of James A. Hamilton* (New York: 1869), pp. 173-74; Samuel Swartout to Andrew Jackson, March 27, 1830, *Correspondence of Andrew Jackson*, Bassett, ed., vol. IV, p. 130.

¹⁵ *The Diary of Philip Hone*, Allen Nevins, ed., 2 vols. (New York: 1927, 2d ed., 1969), vol. 1, p. 375.

tion, for in figuring the port's quarterly payment, the Treasury Department Comptroller only added up duties collected. Swartout added to this bundle sums paid by importing merchants under protest, holding the money in escrow until the U.S. Attorney, who eventually absconded with him, dealt with the appeal and found for the collector. The escrow funds were then passed into Swartout's account and never reported to Washington. The collector also took bribes for either quick service at the docks or underevaluation of incoming goods. Nobody knows to this day how much was really taken, but perhaps as much as \$1 million (about \$16 million in 1986 purchasing power) disappeared in this round of graft.¹⁶

How could this happen? Political appointments, lack of local accountability, and sloppy bookkeeping in Washington all made it easy. New York's naval officer ignored his charge and automatically approved all figures placed before him; he knew he owed his job to Swartout and the current administration, and so chose a course of prudent blindness over embarrassing probity. The naval officer was, by law, the government's watchdog on the scene, and when he failed to watch, the system broke down. Many others in the customhouse told the investigating committee that they knew what was going on, but it was worth their jobs to report it. "We clerks in the customhouse consider ourselves as in the service of the collector," one employee told the committee, "and not in the service of the United States." Political obligation made one employee feel he was "the private assistant of the collector. It was my duty to render the accounts truly, as I did; but not to inquire into the private transactions of the collector."¹⁷

For all the shock and scandal, nothing changed. Jesse Hoyt, New York's next collector, continued in his predecessor's path. Hoyt, too, was a Democratic party power in New York City who

¹⁶ *Congressional Globe*, House of Representatives Committee Reports, House Report 313, 25th Cong., 3d Sess. (1839), pp. 15ff., 25-34, and passim.

¹⁷ *Ibid.*, pp. 19, 47, 97, 265, 362-63, and passim.

believed wholeheartedly in the years after 1838 that the office and both its legitimate and its less-than-honest perquisites belonged to him by right. "I have said from the commencement of the [Jacksonian election] contest," he wrote Martin Van Buren, "that I would not support any administration who would support men in power that contributed to overthrow the Democratic party in this State." Political enemies must be turned out. "All personal considerations and private friendships must yield to *political justice*," he told the New York party leader.¹⁸

Hoyt was even more clever than his predecessor; he would have to be, with everyone looking over his shoulder after Swartout's dodge. He introduced what one observer tagged "*the Storage System*," a means of increasing his legitimate income from the collectorship of \$12,000 a year to about \$20,000. It was a device almost within the law. Very simply, Hoyt held (or "stored") all fees merchants paid under protest for what was usually an unfair evaluation. This money Hoyt put out at interest for up to six months, pocketing the profit. At the same time, he claimed to Congress that nothing in the statutes protected him personally from merchant lawsuits, should the Treasury Department rule in favor of the importer. "I will not put the money I receive under protest," he told a congressional investigating committee in 1839, "to the credit of the United States until Congress makes provision for my protection."¹⁹

This gimmick worked, almost until a change of administration forced him to flee his office in 1841. In the meantime, he found other ways of augmenting his income. As the second congressional investigation of the New York customhouse in

¹⁸ Jesse Hoyt to Martin Van Buren, March 21, 1829, in William L. McKenzie, *The Lives and Opinions of Benjamin Franklin Butler and Jesse Hoyt* (Boston: 1845), pp. 51-52.

¹⁹ For a description of the Storage System, see William L. Stone to Solomon Van Rensselaer, January 23, 1841, in *A Legacy of Historical Gleanings*, Catherine V.R. Bonney, ed., 2d ed., 2 vols. (Albany, N.Y.: 1875), vol. II, p. 149. For Hoyt's disclaimer, see Hoyt to the Committee of Congress, February 1, 1839, *Congressional Globe*, House of Representatives Report 313, 25th Cong., 3d Sess., p. 121.

four years revealed in 1842, the fallibility of the spoils system, in turn, spawned a failed accounting system. Subordinate positions were filled by "no shows," as the large number of employees on the rolls by 1840 left ample scope to create sinecures. "Appointments were based entirely on party affiliation" even at the lowest ranks of the service, and thus a significant part of the work force was "inattentive or absent from duty," with devastating results for the morale of the honest career employees. Hoyt stepped up "political assessments" levied on all customhouse operatives, extended those contributions to the importers as well, and pocketed a portion of the money. Hoyt made life miserable for merchants who did not kick in, and he fired balky employees.²⁰ Certain to face a congressional investigation from a hostile administration after the election of 1840 returned the Whigs to office, Hoyt fled the scene with more than \$150,000 in public money.

The same investigating committee that uncovered Hoyt's schemes concluded that the latter's successor, Edward Curtis (a Whig named by President John Tyler), showed every sign of following in Hoyt's footsteps. After all, arriving at the customhouse on his first day in office, he fired 17 measurers on duty and replaced them with 15 new men, all Whigs.²¹ Even as Curtis began to show every sign of continuing business as usual, Congress (unsuccessfully, in the long run) once again attempted to impose some check on what appeared to be a runaway situation in the vast New York City customs complex. Once again, reform efforts centered on the integrity of the naval officer, but despite a congressional committee recommendation in 1842, nothing was done to ensure that integrity.

When Curtis was replaced in 1845 by the Democratic admin-

²⁰ *Congressional Globe*, House Document 212, 27th Cong., 2d Sess., April 30, 1842, and House Report 669, April 28, 1842; *Niles Weekly Register*, August 24, 1833, and February 2, 1839.

²¹ Cited in Robert G. Albion, *The Rise of New York Port, 1815-1860* (New York: 1939), p. 226; *Congressional Globe*, House Document 212, 27th Cong., 2d Sess., House Report 669, April 28, 1842.

istration of James K. Polk, it was understood that the collector must be Cornelius Van Ness, a political power in the city. State party leader William Marcy, however, to head off embarrassment, strongly urged that, although Van Ness must control the patronage, it was "expedient that there should be an exceedingly honest & vigilant N. officer & one who would divide responsibility in case of trouble." The solution was to name Nicholas Hoffman, "a real watch dog." "So far as the money is concerned," Marcy concluded, "he will look well to it." Van Ness, however, would fill the jobs.²²

This turn of events suggests that in New York, at least, the collector was a creature of political party and could never be counted on to operate honestly. This belief rested on the premise that control of positions for political purposes opened the door to fiscal corruption. The Treasury Department believed—or professed to believe—that the naval office provided the means of keeping the books honest. As subsequent events demonstrate, however, the assumption was not correct; naval officers too were tainted by the system. Even that self-proclaimed paragon Philip Hone proved to have feet of clay in 1851. Having roundly condemned Samuel Swartout more than a decade earlier for manipulating the spoils system for illegal gain, Hone himself proved to be all too capable of contributing his own mite to the system.

Hone was a staunch Whig, and, as a reward for Hone's strong support for the party cause in 1848 and earlier, President Zachary Taylor named him naval officer at the port in 1849. Two years later, with his health failing, Hone asked the President to name his son Robert to succeed him to the office. Philip had taken the job to recoup the family fortune lost in the Panic of 1837; Robert needed the office to compensate for his own business disasters in the 1840's. The son inherited the naval office on his father's death in May 1851, perpetuating a policy of

²²For Curtis, see *ibid.* For Van Ness and Hoffman, see William L. Marcy to Prosper M. Wetmore, May 3, 1845, William L. Marcy Papers, vol. 10, Library of Congress.

naming officers in New York for every reason save merit.²³ When even a person like Philip Hone was compromised by the system, it became clear that something more than reliance on the integrity of the naval officer was called for.

In the same year that the elder Hone died, the Treasury Department appointed four field appraisers to spot-check books and to make random double checks of valuations of imports at all the large ports. In 1854 Treasury Secretary James Guthrie expanded and regularized the procedure so that all major ports of entry would face these inquiries frequently. It was not yet the full-fledged system of secret or field agents that the service clearly needed, but these were early steps in the right direction.²⁴

The problems in large ports, and especially New York City, were beyond the ability of a handful of field appraisers to deal with, however. For example, when the Democrats returned to power in Washington in 1853, it was reported that there were 27,000 applicants for about 700 subordinate positions in the New York customhouse! The *National Intelligencer* commented cynically that "hereafter the government will be chiefly devoted to . . . peddling out small offices, and quarreling with such collectors and other chief officers as may not consent to be the chief tools of the Executive."

The comment was meant to apply to all major ports, not just New York, and in truth Philadelphia offers another case in point. In that customhouse in April 1853, the incoming Democratic collector notified more than 60 customs employees of the wrong political persuasion that they were fired.²⁵

²³ Philip Hone to William Meredith, March 6, 1849, John Winds to Meredith, April 2, 1849, Francis Granger to Meredith, March 17, 1849, Robert Hone to Millard Fillmore, May 20, 1851, Personnel File of Philip and Robert Hone, Naval Officer Applications, U.S. Treasury Department, RG 56, National Archives.

²⁴ Senate Executive Document 2, 33d Congress, 2d Sess., p. 13, December 4, 1854, *Executive Journals of the Senate of the United States*.

²⁵ *National Intelligencer*, April 30, June 4, and October 11 and 18, 1853.

Customs in the Age of Jackson

CULTURE AND POLITICS AT THE CUSTOMHOUSE: NATHANIEL HAWTHORNE

Difficulties posed by a far-reaching political test for customs appointments and terminations were not limited to a large port, as Nathaniel Hawthorne's experience at Salem makes clear.

Appointed surveyor of customs at Salem, Massachusetts, in 1846 and removed in 1849, Hawthorne had a brief but eventful career in the Customs Service. The dates are not the results of happenstance; he was appointed shortly after a Democratic President (Polk) replaced a Whig administration, and was removed when the Democrat gave way to another Whig (Taylor). The dates were thus surgically fixed by political considerations, and in this particular Hawthorne's experience replicated that of countless other 19th-century customs employees. To the degree that his recognizable talent as a creative genius entered into both his nomination and his removal, the story is both less typical and more interesting.

Hawthorne had worked for the Customs Service once before. He had been named a measurer of customs at Boston in the late 1830's by collector George Bancroft. America's most accomplished ante bellum historian, Bancroft was also a major force in Democratic politics in Massachusetts. He recognized the budding talent of the young Salem writer and thought to provide him with a haven that would allow Hawthorne both to write and to earn a living. Hawthorne later referred to this experience as "a very grievous thralldom," and it persuaded him not so much to eschew public office in the future as to aim higher if the need and opportunity arose.²⁶

That chance came with James K. Polk's unexpected victory in 1844. In that year Hawthorne had begun to build his bridges to the local Democratic party machine in Salem, and he allowed it to forward his name to the new President for either the local postmaster's job or a high customs post. "I have grown considerable of a

²⁶Nathaniel Hawthorne, *Passages from the American Note-Books* (Boston, Mass.: 1896), p. 215.

politician by the experience of the last few months," he wrote, when the party endorsed him for the surveyor's position. When he got the job, he reported, "it is exceedingly convenient for a literary man to be able to ensconce himself in an office, whenever his brain gets weary and his pen blunted."²⁷ Had he known what a mixed blessing he was about to receive, Hawthorne's joy might have been tempered. On the one hand, the customs post would provide him with material aplenty about which to write. On the other hand, his removal would cause the financially pressed writer considerable public and private anguish.

Hawthorne's nomination was the result of a mix of political reward and literary merit, as the recommendations on his behalf make clear. The Democratic District Committee for the Second Congressional District embracing Salem wrote to Washington that Hawthorne's appointment would be "the best means of conciliating and giving Satisfaction" to the local party. Many important Salem Democrats were urging the impecunious writer's appointment on the grounds that the cachet of his literary reputation would provide important political returns. John Fairfield, for example, wrote to President Polk that Nathaniel Hawthorne "has always been a democrat in feeling and action." Fairfield added instructively, "With Hawthorne's literary reputation, you undoubtedly are well acquainted. For purity and elegance of style, if not for originality and force, he has no superior, in my opinion, among our best writers. He is a man of great purity of character" even if not particularly "a warm partisan."²⁸

Others testified in the same vein. The publisher of the *Salem Advertiser* assured Polk that Hawthorne "has ever been a pure and primitive Democrat" as well as a "renowned author." George Bancroft, now Secretary of the Navy, also wrote for his

²⁷Quoted in Stephen Nissenbaum, "The Firing of Nathaniel Hawthorne," *Essex Institute Historical Collections*, vol. 114 (April 1978), pp. 78-79.

²⁸H.L. Connolly to Thomas Bowles, October 25, 1845, and John Fairfield to James K. Polk, October 25, 1845, Personnel File of Nathaniel Hawthorne, Notable Persons File, U.S. Treasury Department Records, RG 56, National Archives.

former employee and friend. G.W. Atherton may have best summed up the reasons for Hawthorne's appointment when he wrote the Treasury Secretary that the writer "is an honor to the literature of the Country," and his appointment would "gratify many others besides the Democracy of New England."²⁹ Polk was no literary critic, but he was politically savvy and he recognized a political ornament when he saw one. So he made the appointment early in 1846.

Hawthorne documented his work in the customhouse in two places: the office logbook and the half-fictional, half-autobiographical introductory essay to *The Scarlet Letter* titled "The Custom-House." A reading of this introduction to *The Scarlet Letter* indicates that, where observations can be verified in the sources, Hawthorne's essay is a faithful characterization of the day-to-day routine of the establishment. Thus we can draw on it for a unique glimpse into the way a medium-sized customhouse functioned before the Civil War.

In "The Custom House" Hawthorne wrote that he was on duty for "three and a half hours of each forenoon," a fact borne out by the log. His log entries generally show him arriving before 10 a.m. and leaving around 1 p.m. The log also indicates that on a busy day he might supervise the inspection of as many as four ships, but usually fewer than that and on many days, no ship arrived. He also mentions the occasional morning when "three or four vessels happen to have arrived at once,—usually from Africa or South America."³⁰

²⁹Ibid., Harvey Parsons to James K. Polk, October 29, 1845, G.W. Atherton to Robert J. Walker, December 19, 1845, George Bancroft to B.F. Hallett, February 2, 1846. Significant new evidence of Bancroft's seminal role in Hawthorne's appointment can be found in *The Centennial Edition of the Works of Nathaniel Hawthorne*, 16+ vols. (1962–), *The Letters, 1843–1853*, Thomas Woodson et al., eds., (Columbus, Ohio: 1985), vol. XVI, pp. 143n. and 148n.

³⁰Nathaniel Hawthorne entries, April 21, 1846, Salem Customhouse Ledger, Salem Customhouse Records, Salem Maritime National Historical Site, Salem, Massachusetts. All references to "The Custom-House" Introduction to *The Scarlet Letter* are from the Modern Library edition (New York, 1926). The quotations here are from pp. 3–4.

Hawthorne said that his life changed "that fine morning, I ascended the flight of granite steps, with the President's commission in my pocket."³¹ He claimed—not entirely correctly—that he "ceased to be a writer of tolerably poor tales and essays, and had become a tolerably good Surveyor of Customs."³² The truth was that he continued to write and to publish in those three years when he spent his mornings on the docks, although he complained to Henry Wadsworth Longfellow that his "forenoons in the Custom House" undid him effectively for the rest of the day.³³ He spent his mornings "pacing from corner to corner, or lounging on the long-legged stool, with his elbow on the desk, and his eyes wandering up and down the columns of the morning newspaper." In time, he added, he became "as good a Surveyor as need be."³⁴

With the security of a monthly income beyond his expenses, Hawthorne was making more money than he ever had before and therefore was able to care for his wife and child without worry for the first time in a long time, but he still chafed at his claimed loss of creativity. "Literature, its exertions and objects, were now of little moment in my regard. I cared not, at this period, for books: they were apart from me." Yet, he acknowledged, he studied nature—"human nature"—and stored up experiences and insights into character that would help infuse *The Scarlet Letter* with some of its most luminous qualities.³⁵ At the same time he caught beautifully the operation of the customs establishment in introducing the reader of that work to the world of Salem and the inhabitants' Puritan values.

The customhouse was a world of its own, a world of the old, the secure, the smug, and the inbred. "On ascending the steps" to the customhouse, Hawthorne wrote, one saw "in the entry, if

³¹ "The Custom-House," p. 11.

³² Ibid., p. 42.

³³ Nathaniel Hawthorne to Henry Wadsworth Longfellow, November 11, 1847, Longfellow Papers, Houghton Library, Harvard University.

³⁴ "The Custom-House," pp. 6 and 28.

³⁵ Ibid., p. 28.

it were summer time, or in their appropriate rooms, if wintry," a "row of venerable figures," with "old-fashioned chairs, which were tipped on their hind legs back against the wall. Oftentimes they were asleep, but occasionally might be heard talking together, in voices between speech and a snore, and with that lack of energy that distinguishes the occupants of almshouses, and all other human beings who depend for subsistence on charity, or monopolized labor." These "old gentlemen—seated, like Matthew, at the receipt of customs, but not very likely to be summoned thence, like him, for apostolic errands—were Custom-House officers." ³⁶

When a ship turned up, they moved to action "with lightsome hearts, and the happy consciousness of being usefully employed, —in their own behalf, at least, if not for our beloved country, —these good old gentlemen went through the formalities of office." Down to the water the troop went; "sagaciously, under their spectacles, did they peep into the holds of vessels! Mightily was their fuss about little matters, and marvellous, sometimes, the obtuseness that allowed greater ones to slip through their fingers!" Offending vessels, a disgruntled Hawthorne observed, would be locked and "double lock[ed], and secure with tape and sealing wax"—all this after a "wagonload of valuable merchandise had been smuggled ashore" from the offending ship, "directly beneath their unsuspecting noses." ³⁷ Sometimes, he added, the slippage may have been intentional, for "neither the front nor the back entrance of the Custom-House opens on the road to Paradise." ³⁸

And where did the new officer fit into this scheme? Awkwardly. "There I was, a Surveyor of the Revenue, and as far as I have been able to understand, as good a Surveyor as need be." None of the sea captains, merchants, and fellow customs employees with whom he worked daily "had ever read a page of

³⁶ *Ibid.*, pp. 5–6.

³⁷ *Ibid.*, pp. 15–16.

³⁸ *Ibid.*, p. 13.

my inditing, or would have cared a fig the more for me if they had read them at all; nor would it have mended the matter, in the least, had those same unprofitable pages been written with a pen like that of Burns or Chaucer, each of whom was a Custom House officer in his day, as well as I.”³⁹

Hawthorne insisted that he did not fit in politically either. “I was not appointed to office as a reward for political services, nor have I acted as a politician since,” he claimed.⁴⁰ He was instead an “inoffensive man of letters who had obtained a pitiful little office on no other plea than his pitiful literature.”⁴¹ When the Whigs, who came to power in 1849, decided to give his job to one of their own, Hawthorne was shocked. He was, after all, a literary man who sought the security of the customhouse only to feed his family while he pursued his craft.

His contemporaries (and his biographers) were skeptical. Hawthorne himself had left a paper trail to the contrary. Shortly after taking office in 1846, he had written to Treasury Secretary Robert J. Walker recommending the removal of two “incompetent” inspectors. His own nominees were “capable and efficient men,” he pointed out, and “firm friends of the administration.”⁴² Later that same year he added his name to a petition asking that “a gentleman well known and highly respected in the Democratic party replace a certain Whig in the federal service.”⁴³ In April 1847, he commended to Walker a candidate who had been cleared in “compliance with recommendations from Mr. [Robert] Rantoul [the Massachusetts Democratic kingpin], and other prominent friends of the

³⁹Ibid., pp. 28–29.

⁴⁰Nathaniel Hawthorne to George Hilliard, March 5, 1849, *The Centenary Edition of the Works of Nathaniel Hawthorne*, Woodson, et al., eds., vol. XVI, p. 263.

⁴¹Nathaniel Hawthorne to George Hilliard, March 5, 1849, in Moncure Conway, *Life of Nathaniel Hawthorne* (London: 1890), pp. 111–12.

⁴²Nathaniel Hawthorne to Robert J. Walker, May 21, 1846, *The Centenary Edition of the Works of Nathaniel Hawthorne*, Woodson et al., eds, vol. XVI, p. 160.

⁴³Ibid., Nathaniel Hawthorne et al. to James Miller, circa October 14, 1846, vol. XVI, p. 184.

administration.”⁴⁴ Hawthorne even boasted of his plots and schemes, writing in “The Custom House” that “I must plead guilty to the charge of abbreviating the official breath of more than one of these venerable servants of the republic. They were allowed, on my representation, to rest from their arduous labors.”⁴⁵

In June 1849 Hawthorne lost his commission. Although all that happened was that Hawthorne failed the political test he had so often applied to others, he still denied his role in local politics. “I never in my life walked in a torch-light procession,” he assured his readers, and “would hardly have done anything so little in accordance with my tastes and character, had the results of the Presidential election depended on it.” Besides, he reminded them, the collector had more to say about appointments than he did.⁴⁶

Hawthorne’s fame made his removal a national as well as a local affair. The controversy which had begun with his political disclaimers soon grew into arguments about America’s obligation to support its artists. The Democratic press was predictably sympathetic to his cause. The Philadelphia *Evening Bulletin* called Hawthorne one of the few “glorious souls” who was “above the prejudices of the time.” It was criminal to take away the job of a man who earned his living “by that most torturing of all vocations, the rack and tear of the brain.” The Albany *Atlas* thought it “disgusting” that “the gentle Elia of our American literature” be removed. And William Cullen Bryant’s New York *Evening Post* described Hawthorne’s firing as “an act of wanton and unmitigated oppression by the Whigs.”⁴⁷

⁴⁴Ibid., Nathaniel Hawthorne to Robert J. Walker, April 28, 1847, vol. XVI, p. 211.

⁴⁵Hawthorne, “The Custom-House,” p. 13.

⁴⁶Nathaniel Hawthorne to George S. Hilliard, June 18, 1849, Boston *Daily Advertiser*, June 21, 1849. This letter was first published in Hilliard’s *Salem Advertiser* and later either reprinted or commented upon in newspapers in the Northeast.

⁴⁷New York *Evening Post*, June 22, 1849; Philadelphia *Evening Bulletin*, June 15, 1849; and Albany *Atlas*, June 17, 1849.

The Whigs, of course, used this argument to plead their case. The *Salem Register* acknowledged that Hawthorne was not a "particularly obnoxious" party man, and rejoiced that his removal freed him from the "disturbing influences" of his Democratic cohorts and allowed him to "turn his undivided attention to the cultivation of his fine talent by which he can confer a higher and more lasting benefit to the public, than by his services as Surveyor." Besides, the *Register* added malignly, Hawthorne had been browsing on the public clover long enough.⁴⁸

Hawthorne's supporters kept the affair alive with a barrage of letters to the press and to public officials. Bryant reported in the *Evening Post* that Hawthorne had "received his appointment from Mr. Bancroft as a tribute to his literary position entirely," noting that the salary allowed the author "to continue the exercise of those rare talents which have contributed so much to the delight of his countrymen for many years." The loss of that salary to fulfill some political agenda disturbed the New York publisher and writer.⁴⁹ A fellow townsman assured Treasury Secretary William Meredith that Hawthorne's job was "a necessity to him."⁵⁰ George Ticknor also warned the Secretary that Hawthorne's removal "throws him back again to poverty."⁵¹ And George Hilliard wrote to Senator Daniel Webster to plead for Hawthorne's reinstatement. The loss of the job exposed the author to "absolute want."⁵²

Hilliard's letter raised another issue that clouded the Hawthorne debate. "Surely," he wrote, "the patronage of letters and of men of letters is an honorable thing to the country."⁵³ The press also advocated patronizing the arts as a proper responsibility of government. The case was stated best by the educator

⁴⁸ *Salem Register*, June 11, 1849.

⁴⁹ *New York Evening Post*, June 22, 1849.

⁵⁰ Amory Holbrook to William Meredith, June 12, 1849, Personnel File of Nathaniel Hawthorne, Notable Persons File, U.S. Treasury Department Records, RG 56, National Archives.

⁵¹ *Ibid.*, George Ticknor to William Meredith, June 19, 1849.

⁵² *Ibid.*, George Hilliard to Daniel Webster, June 20, 1849.

⁵³ *Ibid.*, George Hilliard to Daniel Webster, June 20, 1849.

Horace Mann, who was also a Whig Congressman—and Hawthorne's brother-in-law. After telling Secretary Meredith that Hawthorne had neither gained nor used his job for political ends, he went on to describe the European practice of supporting artists in order to further the arts. "In this country, too," he asked, "is not literary merit . . . a fair ground of appointment to office, and of holding it when appointed?" The President "has no literary offices or honors to bestow," he continued, and "except through the Patent Office, the administration can hardly recognize such things as literature or science. If then, in its appointments," Mann concluded, "it shows no affinity, no sympathy, no regard, for men of distinguished scientific achievements or literary merit, does it not write itself down?" Hawthorne himself, Mann concluded, "held it morally wrong to administer it [his position] as a politician."⁵⁴ John L. O'Sullivan, editor of the *United States Magazine and Democratic Review*, was more pungent than the tactful Horace Mann: People like Hawthorne should be cherished and nurtured by government; those who would remove such as Hawthorne were the kind who would as well "broil a hummingbird, and break a harp to pieces to make the fire."⁵⁵

Despite Hawthorne's removal, the practice of naming literary figures to customs posts was commonplace, both before and after 1849. Customs employees in the Jacksonian era included poet William Davis Gallagher, historian George Bancroft, and actors and playwrights Mordecai Noah, Thomas Abthorpe Cooper, and James Nelson Barker. In the years from 1850 to just prior to the Civil War,⁵⁶ historians and scholars Noah Brooks and Richard Grant White found homes in Customs, as did writers Herman Melville, Charles F. Briggs, and J. Ross Browne.

⁵⁴ Ibid., Horace Mann to William Meredith, July 5, 1849.

⁵⁵ Ibid., John L. O'Sullivan to William Meredith, June 22, 1849.

⁵⁶ For this information, Michael N. Ingrisano combed Treasury Department appointment records, turning up more than 50 American cultural figures who held appointments beginning in the Age of Jackson. See also his *Biographical Directory of the U.S. Customs Service, 1771-1989*, 2 vols. (Washington D.C.: 1985-1986).

As for Hawthorne, he was embarrassed and embittered by the furor he had caused. He shrank at having his finances aired in public and recoiled from the praises his supporters sang. Most troublesome of all, however, were the attacks of local Whigs. Charles Upham's was the worst. Upham patronizingly consigned Hawthorne to literature for his own good. The author's supporters "ought to be thankful," the Salem politician wrote, "that Mr. Hawthorne is withdrawn and delivered from influences and connections that made him officially responsible for acts most uncongenial with his nature, and unworthy of the reputation, as one of the most amiable and elegant writers of America."⁵⁷

But Hawthorne had his revenge. "I must confess," he had written to Henry Wadsworth Longfellow, that his pending removal "stirs up a little of the devil within me." If his enemies in Salem succeeded, he added, "I will surely immolate one or two of them." And indeed, he did "select a victim," in his own words, in fact, more than one. "If they [Whig enemies] will pay no reverence to the imaginative power when it causes herbs of grace and sweet-scented flowers to spring up along their pathway, then they should be taught what it can do in the way of producing nettles, skunk-cabbage, deadly night-shade, wolf's bane, dog-wood." Hawthorne almost hoped to be "turned out, so as to have an opportunity" of taking literary revenge. "I have often thought that there must be a good deal of enjoyment in writing personal satire; but never having felt the slightest ill-will towards any human being, I have hitherto been debarred from this particular source of pleasure."⁵⁸

He did not deny himself the pleasure in this instance. His wife suggests that the author chose five victims, Upham primary among them. Hawthorne scholars concluded that the author had Upham in mind when he drew the unflattering character of Roger Chillingsworth in *The Scarlet Letter*. If the literary

⁵⁷ Note on Upham's "Memorial" in *The Centenary Edition of the Works of Nathaniel Hawthorne*, Woodson et al., eds., vol. XVI, pp. 294-95n.

⁵⁸ Ibid., Nathaniel Hawthorne to Henry Wadsworth Longfellow, June 5, 1849, pp. 269-72.

scholars are correct, then Upham, through Chillingsworth, did indeed "writhe before the grin of the multitude for a considerable time to come." ⁵⁹

As both Hawthorne's experience and that of the New York City customhouse demonstrate, events in the Age of Jackson always seem to come out larger than life. It was more than a colorful era for the history of the nation and of the U.S. Customs Service. The period from 1825 to 1850 was a period of significant growth in the size of the agency, when Customs returned ever greater increments of revenue to the U.S. Treasury, as new tariff acts dramatically increased charges on the imports over which the Customs Service provided. Only the federal land banks in the West came close to customs as a source of national revenue. As size and function grew apace, so did the continuing tradition of politicization; Jackson's spoils system extended and deepened the exploitation of the Customs Service as a repository for political appointments. There was, unfortunately, no commensurate growth in administrative measures emanating from either the executive or the congressional branch to allow the agency to better control its own destiny. The trauma of the Civil War would delay even further many of those much-needed administrative and political reforms.

⁵⁹Ibid.

Chapter V

CUSTOMS AND THE CIVIL WAR: UNCERTAINTY AND DISRUPTION, 1850–1865

The Civil War is widely perceived by Americans to have been the single most traumatic episode in their history. Obviously, the Customs Service was hardly at the war's center, yet it reflected internally the stresses of a fratricidal conflict that affected so much of the life of the nation. The decade before the Civil War was characterized by weakening national leadership, the political infirmities reaching right into the White House, where a series of ineffective Presidents presided. Congress was always preoccupied with the grave questions surrounding the future of slavery. Thus, necessary reform of the Customs Service, along with most other matters of significance on the national agenda, was simply delayed. There was one favorable development; at last, a Commissioner of Customs was in place, although his role was passive.

Neither he nor anyone else could prevent the chaos that affected border customs posts in the face of impossible enforcement demands. Things were even worse for the fledgling Customs Service of the Confederacy. The wartime Union blockade of the southern ports all but froze Confederate trade. Both customs services, in short, had more than enough worries on their plates, mirroring to a degree the misery that war imposed on both sides.

THE U.S. CUSTOMS SERVICE

ADMINISTRATION AND ENFORCEMENT

Sporadic budget constraints in the 1850's curbed the Customs Service's employment of special agents, or at least it chilled any effort to regularize their appointments in either the agency or the Treasury Department. Still, this particular initiative, dating back to the Jacksonian era, persisted. Agents appeared in various forms: some were specialists new on the scene to face new complexities of enforcement; others, the long-standing ad hoc special agents. These specialists worked directly for the Treasury Department but were apparently always assigned to customs enforcement. "Secret Inspectors," the recent *History of Enforcement* by the Customs Service has concluded, "operating undercover and in a loose 'organization' largely controlled by the Secretary of the Treasury, fulfilled their purpose early in the country's and in Customs' history, when the frontiers were thinly populated and vulnerable to smugglers determined to evade the law."¹

The use of confidential agents had been cut back and codified in 1847. There could be only one "at any one port of entry," and his compensation, including per diem and mileage, could not exceed \$1,200 per year. Despite Treasury Secretary Robert D. Walker's ruling, however, the use of secret agents not only persisted but clearly surged. In 1853 Walker's successor, James Guthrie, complained that "lately, the number of such appointments had greatly increased," and he ordered their employment "discontinued." That did not happen. Only the word "secret" disappeared temporarily from the Treasury lexicon, replaced by one or another of the euphemisms for the same position mentioned earlier.²

The picture is fairly clear for the 1850's: Despite repeated Cabinet-level efforts to cut back ad hoc appointments, the realities of customs enforcement and the increasing complexity

¹Michael N. Ingrisano, Jr., *A History of Enforcement in the United States Customs Service, 1789-1875* (Washington, D.C.: 1986), chapter 4, pp. 30-31.

²*Ibid.*, chapter 4, pp. 11-15.

of policing the nation's borders made the use of new agents inevitable. In 1853, for example, the Customs Service used mounted inspectors along the Southwestern border to try to collect duty on cattle crossing from Mexico into the States.³

By 1850 also, Customs was using special examiners of drugs to enforce an 1848 law. In Salem, Massachusetts, for example, C.H. Pinkham, a local apothecary, was on call to visit incoming ships and examine and test substances awaiting clearance as either spice or medication, before allowing the vessels to land. Inasmuch as an esoteric skill was required, the drug examiners were paid \$1,000 per year to be on call and an additional fee for each assignment.⁴

The position of appraiser of merchandise was introduced in the port of New York in the Jacksonian period. In 1854, the job was expanded and regularized. By 1865 appraisers were at work in all major ports, evaluating ever more complex imports in order to tax a widening range of goods as demanded by far-reaching tariff laws.⁵ Even the rapid expansion of this arm of enforcement could not keep up with sophisticated efforts at circumvention. "Scarcely an invoice reaches us," complained the appraiser at Boston in 1863, about a well-known ploy for remission of duties, "without our being called to Examine with a view to an allowance for damage." This was a common

³Ibid., chapter 3, pp. 3-7, and note 11. Also U.S. Treasury Department, Bureau of Customs, "Proceedings of the Collectors of Customs Held in Washington, D.C., January 23, 24, 1934," unpublished transcript in the Archives of the U.S. Customs Service, Washington, D.C. The patrols continued for over a century, supplemented in the 1920's and '30's by aircraft and automobiles, generally seized when abandoned by smugglers.

⁴Report of the Collector of New Orleans Customhouse, 1861, F.H. Hatch Collection, Beineke Library, Yale University, New Haven, Connecticut; G.H. Pinkham to William B. Pike, February 27 and March 14, 1861, Salem Custom House Papers, 1861 File, Essex Institute, Salem, Massachusetts; *Salem Directory, 1866 . . . A Business Directory* (Salem, Mass.: 1866), p. 133.

⁵Senate Executive Document 2, 33d Cong., 2d Sess., p. 13, December 4, 1854, *Executive Journals of the Senate of the United States*; U.S. Customs Service, *A History of the Appraiser of Merchandise, 1789-1966* (Washington, D.C.: 1984), chapter 3, p. 21.

complaint about a well-known dodge to gain, in effect, remission of customs duties.⁶

From 1798 onward, customs collectors in designated ports were also directors of marine hospitals. Marine hospital administration involved imposing and enforcing quarantine of incoming shipping, collection of seamen's contributions of 20 cents a month for coverage (payable upon arrival in port), and maintenance of the hospital buildings themselves (in Salem and New Orleans, for example). The Civil War would greatly expand this responsibility as the Navy and Merchant Marine rapidly increased in size and the number of sailors requiring care multiplied. As usual, the collector could count on little additional help to meet this dramatic increase in responsibility.⁷

Periodic budget panic notwithstanding, special agents played an increasingly important role in enforcement: because most of them were not regular employees of the service but free-lance operatives occasionally employed or agents of the Treasury Department, the pattern of their significance can only be uncovered by specific example. Many administrators and collectors needed them, but no one seemed able to acknowledge that dependence. Treasury Secretary Salmon P. Chase in 1861 made frequent use of special agents operating directly under his control to try to deal with complex difficulties caused by secession and conflicting loyalties. He sent special agent William Mellen into Cincinnati in 1861, for example, to report on the loyalties of all the river collectors in the area, in this crucial border region.⁸ In 1863, Chase dispatched Special Agent John

⁶D. Jellison to Z. Goodrich, April 17, 1863, "Customs Damage Cases, New York, Philadelphia, Boston, 1863-1864," Entry 98, RG 56, Treasury Department Records, National Archives.

⁷Report of the Collector of the New Orleans Customhouse, 1861, F.H. Hatch Collection, Beinecke Library, Yale University, New Haven; Ralph Chester Williams, *The United States Public Health Service, 1789-1950* (Washington, D.C.: 1951), pp. 68-71.

⁸Salmon P. Chase to William Mellen, August 8, 1861, "Letters Sent Relating to Restricted Commercial Intercourse," BE Series, 1861-1863, Entry 316, RG 56, Treasury Department Records, National Archives.

Hutchins to New Orleans to look into charges that collector William Gray had altered the manifest of the ship *Creole* so as to confiscate and keep smuggled cigars; he was also accused of mismanaging public money and of selling a customs boat and pocketing the proceeds. Hutchins concluded that the evidence against Gray was circumstantial and that the charges against him may have been personally or politically motivated, so he recommended that Washington take no action for the time being. For this duty he was paid \$6 per day and 10 cents a mile for the travel involved. Given this pittance, it is a wonder that Hutchins himself remained devoted to his job.⁹

Certainly the most intriguing—and perhaps the most adept—of the special operatives was Charles P. Cooper, who also worked directly for the Treasury Department in the 1850's. His last known assignment for the U.S. Treasury was in April 1860; less than a year later, in March 1861, he took on a similar assignment for Christopher Memminger, Confederate Secretary of the Treasury. U.S. Secretary Howell Cobb dispatched Cooper in the first instance to travel southward sub rosa to report on the loyalties and competence of some Southern customs officers. The special agent wrote from Vicksburg, Mississippi, in February 1860 that "the Surveyor's office remains, as frequently reported, in not a very well organized condition, The cause is the want of a *head*." Although he visited the customhouse several times over a couple of weeks, Cooper added, "I have never yet met the Surveyor." At the end of March, he wired Cobb enigmatically from Tuscumbia, Alabama, "Abolish this post. I will report further." In his last known report to the U.S. Treasury on April 2, he wrote that "there is nothing being done" at Tuscumbia. The surveyor is "absent from his post . . . and has not been [seen] for a year or two." ¹⁰

⁹Report of John Hutchins, June–August, 1863, Report and Related Papers Regarding the Operation of the New Orleans Customhouse, Entry 252, RG 56, Treasury Department Records, National Archives.

¹⁰Charles P. Cooper to Howell Cobb, February 10, March 30, and April 2, 1860, "Letters and Reports Received by the Secretary of the Treasury From

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Given Cooper's inability to find customs surveyors on duty in 1860, he may have figured that he could only go up by joining the Confederate Treasury Department. In any case, a year later, in 1861, he was one of the first appointees to a Division of Special Agents created by the Treasury Department of the Confederate States of America. From the sad plight of the Confederate Customs Service, as we shall see, Cooper might not have found many surveyors in the course of his travels for the Confederacy, either. Anyway, his first assignment in 1861 was to secretly investigate the Savannah, Georgia, customhouse; having done this, he went on to the customhouses at Atlanta and Athens, Georgia, Florence, South Carolina, and Norfolk, Virginia. Occasionally he found nothing amiss, but more frequently he found—literally—nothing.¹¹ Cooper's odyssey typified the confusion in the Customs Services on both sides at the opening of the Civil War.

CUSTOMS AND THE BEGINNING OF THE CIVIL WAR: THE UNION

By early 1861, the Customs Service was only one of many Government agencies facing potential defections as southern States began to secede. Charles Cooper was not the only one who would switch allegiances, as both Treasury and Customs were acutely aware, and they moved to prevent departing officials and agents from taking important information with them. "To prevent interruption and delay in the dispatch of public business," Assistant Treasury Secretary George Harrington wrote Customs Commissioner Samuel Ingham in March, "it is ordered that no person except an official of the Department be admitted into any of the Rooms of the Treasury Department." And

Special Agents, 1854-1861," Microfilm Publication M177, roll 3, RG 36, National Archives.

¹¹Christopher Memminger to Jefferson Davis, March 23, 1861, Memminger to Charles P. Cooper, April 4, 1861, "Letters Sent by the Confederate Secretary of the Treasury," Microfilm Publication M500, roll 1, RG 65, National Archives.

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inasmuch as Washington was a border city now, all customs employees at headquarters were advised in April that "in case of an alarm at night the Clerks and Messengers . . . will make the best of their way to the Treasury building." There they would be "supplied with arms and ammunition." The intensity of the problems caused by secession was brought home to Customs in May when Commissioner Ingham was replaced by the much more savvy veteran politician and newspaperman Nathan Sargent. Customs entered the war very much aware of the problems that enforcement and loyalty would pose in defending the revenue.¹²

In proclaiming a blockade of Confederate ports at the end of April 1861, newly inaugurated President Abraham Lincoln justified it on the grounds that in southern cities "public property . . . has been siezed, the collection of the revenue obstructed, and duly commissioned officers of the United States . . . have been arrested and held in custody as prisoners." ¹³ "The laws of the United States for the collection of revenue," Lincoln conceded, "cannot be effectually executed" in most of the ports of the seceded states.¹⁴

The question of loyalty became all-consuming in the convulsive days of 1861, as many southern customs officers switched allegiance. In August 1861, Chase ordered all collectors of customs to administer a new loyalty oath to subordinates and warned, "Collectors will promptly report any instance of refusal to take and subscribe to the oath in question." The requirement

¹²George Harrington to Samuel Ingham, March 29, April 18, May 16, 1861, Letters Sent to Heads of Bureaus, 1861-1878, RG 56, Treasury Department Records, National Archives.

¹³Abraham Lincoln's Proclamation, April 27, 1861, "Correspondence, 1859-1861, New London [Connecticut Customhouse]," RG 36, Bureau of Customs Papers, Federal Records Center, National Archives, Waltham, Massachusetts.

¹⁴Draft copy of Lincoln's Proclamation, "Letters Sent by the Secretary of the Treasury Relating to Restricted Commercial Intercourse, 1861-1867," Microfilm Publication M513, roll 1, RG 56, Treasury Department Records, National Archives. This collection is an excellent source for problems of enforcement that the Customs Service faced throughout the war.

was one of a pair of acts spelling out customs procedures in hostile and uncertain times. The second provided for the collection of duties at any port of entry "in enemy hands." Custom-houses, or more properly, points of collection, could be established "in any secure place" in an area, "either on land or on board any vessel in said district, or at sea, near the Coast." Customs officers, in a provision reminiscent of both the embargo (1807) and the nullification (1833) crises, were given the absolute right to draft nearby Army or Navy units to prevent unlawful attempts to evade customs duties or to smuggle goods to the Confederacy. Any vessel attempting either would be forfeit to the Union. Finally, the law provided that customs collectors and surveyors possessed the right to requisition for temporary use any vessel at hand, government or private, to enforce the law.¹⁵

The loyalty oath requirement even survived the war. Author Herman Melville's personnel file in the Treasury Department records reveals that, when he was sworn in as inspector of customs in New York at the end of 1866, he had to sign a loyalty oath in addition to taking his oath of office. Like all other customs employees in this period, he affirmed that he had never borne arms against or "voluntarily" given "aid, countenance, counsel or encouragement to persons engaged in armed hostility" against the United States. Melville, whose grandfather Thomas was for many years a customs officer at Salem (1789-1814) and at Boston (1814-1830), would remain in the Service until 1886. Unable by the 1860's to make a living any longer as a writer, he worked for almost 20 years at \$4 per day, one of nearly 300 inspectors in the New York customhouse.¹⁶

¹⁵ Acts of July 13, August 6, 1861, Circular Letter, Salmon P. Chase to Collectors of Customs, August 16, 1861, "Letters Sent Relating to Restricted Commercial Interchange, BE Series, 1861-1863," Entry 316, RG 56, Treasury Department Records, National Archives.

¹⁶ Herman Melville's Loyalty Oath and Oath of Office, December 5, 1866, Melville to E.L. Hedden, June 16, 1886, J.G. Woodbury to George S. Boutwell, January 9, 1873, and *passim*, Melville's Personnel File, RG 56, Treasury Department Records, National Archives.

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It was left to Treasury Secretary Salmon P. Chase to implement both the loyalty oath and the rigorous new customs law. Immediately upon taking office, he was caught up in the problems of customs enforcement in crisis circumstances. The first duty of a collector, Chase made clear, was to prevent trade with the enemy. "No permit of any collector," he cautioned all Union ports, "is of any validity as a sanction to intercourse." All goods "going to or coming from a state under insurrectionary control, and every vessel . . . to or from such states is forfeited to the United States and must be seized."¹⁷ To make clear the penalties of disaffection and—in the eyes of the U.S. Government, disloyalty—customs officers who joined the Confederacy were routinely treated as defaulters, enabling the Treasury Department to confiscate their bonds. Customs collectors in the South who remained loyal were authorized to seize Confederate property in all ports where it was found, in the name of the United States. Presumably such seizures would carry a portion of their value as a prize from which loyal customs officers would benefit. Carrot and stick at work in the best, and worst, traditions of government.¹⁸

War pressures were nowhere more in evidence than at the border ports, some of which lay in a virtual no-man's land between Union and Confederacy. Alexandria and Baltimore in the East and Louisville and Cincinnati in the West are good examples of the high-wire act the Customs Service often had to perform at the opening of hostilities. All the regulations in the world, and even broad new powers, were not sufficient to stop contraband traffic. So compelling was the Confederacy's need for northern manufactures, and so ambivalent the border states' populations, that the U.S. Customs Service had all it could do

¹⁷ Circular Letter, Salmon P. Chase to Edward Prentiss (and all collectors), September 3, 1861, "Correspondence, 1859-1861, New London," RG 36, Bureau of Customs Papers, Federal Records Center, National Archives, Waltham, Massachusetts.

¹⁸ Salmon P. Chase to Nathan Sargent, October 5, 29, 1861, Letters Sent to Heads of Bureaus, 1861-1878, RG 56, Treasury Department Records, National Archives.

just to keep the lid on the flow of contraband from North to South.

For U.S. Customs, the agony of uncertainty in these first months of the war was evident in the border port of Alexandria, Virginia. The Union Navy's commanding presence on the Potomac and the Chesapeake Bay helped the Union to retain control of this rebel town and its port and customhouse. Collector Henry F. Dixon's strong sense of duty to his oath as a federal officer conflicted with his deep personal allegiance to his native Virginia. For nine months he stayed on, adhering to his orders to keep the customhouse open to "vessels from northern ports" and to enforce all U.S. revenue laws. By the end of 1861, though, Dixon had either defected or been removed because of his suspect loyalty. The fragile hold the Union had on the port was brought home in the instruction of the Secretary of the Treasury issued to the new collector, Andrew Jameson, who was told that a special agent was being assigned to Alexandria in order to enforce "suppression of treasonable correspondence with the insurgents." The unnamed agent "may occasionally need your assistance and you will render him any aid" he might require.¹⁹

The complexities of enforcement heaped on the Customs Service were also graphically brought home by the example of Baltimore, one of the most sensitive of border ports. Even using anonymous tips and the detective work of special agents, the new collector, Henry W. Hoffman, still had his hands full. He had replaced John T. Mason, whose loyalties were to the Confederacy, on April 15, 1861. Within weeks Hoffman was caught up in intrigue. On May 3, Chase ordered him "to grant no clearance to vessels destined for ports in the States which have been declared under blockade." Baltimore was, as always, the major transfer point for goods passing from North to South. A few days later

¹⁹Salmon P. Chase to Henry F. Dixon, May 30, 1861, Chase to Andrew Jameson, January 25, 1862, "Letters Sent by the Secretary of the Treasury Relating to Restricted Commercial Intercourse, 1861-1867," Microfilm Publication M513, roll 1, RG 56, Treasury Department Records, National Archives.

Hoffman was warned to watch out for a shipment of "Henderson's Propellers" (ship's propellers of northern manufacture which were desperately needed by the Confederacy) being routed through Baltimore. An anonymous tipster had said that a ship carrying the contraband would clear Baltimore for a Chesapeake port under Union control, but would try to put in to one or the other of the small Virginia harbors still in the grip of the Confederacy.²⁰

By June, Hoffman's duties went far beyond those of a customs officer in normal times. "There is reason to believe," Chase wrote, "that there is a large quantity of goods now being shipped from Baltimore on board the schooner *Mt. Vernon*, ostensibly intended for Fall Pine, St. Mary's County, Maryland, but really en route for Virginia." To find out what was really being shipped and to cut off a nascent smuggling route, "it is thought that you might if practicable without exciting suspicion place on board the vessel as passenger a confidential customs officer with instructions to seize the vessel and cargo." At the same time, the customhouse, as the most secure government establishment in Baltimore, was used as an armory, with stacks of Winchester rifles held under guard on the premises, under the direct supervision of the collector.²¹ Both Hoffman and his surveyor on the Potomac, Jonathan Jilton, reported frequently about their attempts to find "the most effectual means of putting an end to the illicit trade which is still said to be carried on across the Potomac, despite all the vigilance and means thus far employed for its complete suppression."²²

Even as late as mid-1862 Jilton virtually acknowledged that measures to date had not interdicted the illegal passage of goods to the South. Trade between Virginia and Maryland was rampant, and the Baltimore customs district had responsibility for

²⁰ *Ibid.*, Salmon P. Chase to Henry W. Hoffman, May 3 and 7, 1861.

²¹ *Ibid.*, Salmon P. Chase to Henry W. Hoffman, June 5, 8, and 12, 1861.

²² Henry W. Hoffman to Salmon P. Chase, July 3, 1862, "Letters Received by the Secretary of the Treasury by the Collectors of Customs, 1833-1869," Microfilm Publication M174, roll 200, RG 56, Treasury Department Records, National Archives. This collection also is a treasure trove of information on Customs and the Civil War.

the Potomac River. It could not handle it without more help, reported Jilton, the man on the spot in charge of the Potomac customhouse. He wanted a "military squad" placed at "different points on the river." There would be "two intelligent soldiers . . . stationed at each point" stopping each vessel and reporting identities to the customhouse. If they had not cleared, the surveyor "could give the revenue cutters notice to capture them." Jilton concluded that no fewer than 12 or 14 landings on the Maryland side should be patrolled.²³

"Almost daily," Collector Henry Hoffman reported, in summarizing conditions in the parent customs establishment in Baltimore, "we have information of goods being shipped from this port to Virginia in our Maryland craft. In some instances we have arrested the parties," but, he added, "too many get off." As in other ports on the fringes of the Confederacy, there were not enough officers to do the job, given the Confederate sympathies of much of the Maryland population.²⁴ Not enough agents and the disloyalty of border people were widespread complaints in ports on the fringes of the Confederacy.

The western borders fared no better, as events on the Ohio River demonstrated. Chase received reports in 1861 that goods destined for the Confederacy were regularly being shipped down the Ohio, clearing Cincinnati customs, and finding smooth sailing thereafter. The Treasury Secretary was furious, and he let the surveyor know it. "It is reported," Chase wrote, "that the agents appointed by you for the purpose of preventing this traffic are in the habit of passing their time playing cards and in other amusements to the entire neglect of their duties." Only Chase's own special agent could have ferreted out this detail; he asked the Cincinnati surveyor to report to him forthwith.²⁵

²³ Ibid., Jonathan Jilton to Henry W. Hoffman, July 30, 1862.

²⁴ Ibid., Henry W. Hoffman to Chase, July 9, 1861.

²⁵ Salmon P. Chase to E. Carson, December 6, 1861, "Letters Sent by the Secretary of the Treasury Relating to Restricted Intercourse, 1861-1867," Microfilm Publication M513, roll 1, RG 56, Treasury Department Records, National Archives.

Sometimes, as at Louisville, problems on the Ohio were less pressing. Chase, involved in every detail of customs operations, it would seem, instructed Surveyor Charles Cotton to turn over to Confederate agents a shipment of bibles, after first checking the boxes carefully to make sure there was "nothing else besides Bibles" in the consignment. Bibles seemed to be the scam of choice for river smugglers in the West. The Washington City Bible Society in 1863 asked Treasury for permission to send 20,000 bibles to the "rebellious States." Chase responded with grim humor that "I cheerfully lend my aid . . . to the modest possible dissemination of the Gospel," but added that "disloyal or unscrupulous persons" would not hesitate to send "percussion caps and other contraband articles to the enemies" along with the good books. Thus, he told the Bible Society, the boxes and books would have to be opened and "examined by and packed under the supervision of a Custom House officer . . . to prevent their being tampered with on the route."²⁶ The Ohio River simply posed an insuperable problem, given the sympathies of the local population and the impossibility of cutting off water and overland traffic in a landscape pocked with so many opportune spots.

Chase learned from special agents that goods cleared through Louisville for southern Kentucky were actually taken from the railroad cars at Elizabethtown, Kentucky, and transported by wagons on back roads into Confederate Tennessee. The Secretary simply banned clearance of any goods at all for southern Kentucky, an area where the population heavily favored the enemy. And by November 1861 the Louisville customhouse was, like Baltimore, doing duty as a Union arsenal, housing large stores of rifles for General William T. Sherman.²⁷

²⁶Ibid., Salmon P. Chase to Charles Cotton, August 24, September 2, 1861; Chase to M.H. Miller, June 26, 1863, "Letters Sent Relating to Restricted Commercial Intercourse," BE Series, 1861-1863, Entry 316, Treasury Department Records, National Archives.

²⁷Ibid., Salmon P. Chase to Charles Cotton, September 10 and November 1, 1861.

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CUSTOMS AND THE COMING OF THE WAR: THE CONFEDERACY

As difficult as it was for the U.S. Customs Service to operate in the opening months of the war, its problems pale in comparison to the exigencies under which Confederate customs operated. In February 1861 the newly convened Confederate Congress's Committee on Commercial Affairs, meeting in secret session, recommended that the Treasury Secretary undertake a comprehensive investigation into the effectiveness of the new Confederate Customs Service. Although the Confederacy expected little customs revenue in the face of the Union blockade, a customs service was viewed as an important symbol of national sovereignty and identity, so it must exist, revenue or no. In light of the reality, however, the Confederate Congress asked Treasury Secretary Christopher Memminger "to make a reduction in the expense of each customs-house of at least 25 per cent within the next Six Weeks, and to continue all the officers in that period." Memminger turned the task over to Charles Cooper, the former U.S. secret agent and, by February 1861, the head of the Confederate Treasury Department's Division of Special Agents. All Confederate customs officers, in the meantime, must post new bonds, for "neither the former [U.S.] bonds nor oaths would avail them anything under the new appointment," if they had formerly been U.S. customs officers.²⁸

As Memminger and the Confederate Congress both knew at the outset, customs would pose tremendous problems. Expenses for salaries and maintenance of customhouses were fixed, and costs would be far too high, given the paucity of revenue collected. Yet by April the decision had been made to retain the Service intact as a symbol of Confederate nationality, and the collectors were appointed to permanent slots. Cooper had visited

²⁸ *Extracts from the Journals of the [Confederate] Congress* (Washington, D.C.: 1880), entry for February 14, 1861; Christopher Memminger to Jefferson Davis, March 23, 1861, Memminger to Charles P. Cooper, April 4, 1861, "Letters Sent by the Confederate Secretary of the Treasury," Microfilm Publication M500, roll 1, RG 65, National Archives.

most of the southern customhouses “for the purpose of organizing the Customs business,” but some small customhouses inevitably fell by the wayside. In April, for example, the port of entry at Hardwick, Georgia, was terminated, a victim of the Union blockade.²⁹

Other ports of call were maintained at high cost, to show the Confederate flag. Collector Josiah Bell in Beaufort, South Carolina, for example, survived port closings even though he reported to Memminger in response to an 1862 inquiry: “In answer I have to state, that no vessel has entered this Port since the actual establishment of the blockade, to wit, the 7th of September” 1861. Nor were any vessels permitted to leave port, Bell added. The blockade of Beaufort consisted of two steamers, absent for two or three days at a time (presumably doing double duty). Inasmuch as Union skippers followed no set pattern and were not normally visible from land, Bell concluded, “the blockade has been efficient, ingress and egress being totally impossible.”³⁰

The travails of Samuel Beall, the collector at Eastport, Mississippi, perhaps demonstrate even more graphically the problems facing the infant Confederate Customs Service. Beall was appointed collector in March 1861 after posting a bond and taking an oath to the Confederate States of America. His first request was typical: he noted that he was “engaged in the wholesale grocery business at this place and can’t sell out without great sacrifice.” He wanted to stay in business and to collect the customs. Getting this concession, he then flooded Memminger with queries about renting a customhouse, hiring an assistant, and engaging a “Revenue Guard,” the town being too small to support a local policeman. He then complained that, although there was no effective blockade, ships carrying “du-

²⁹Christopher Memminger to Charles P. Cooper, April 4, 1861, Memminger to Benjamin Stiles, April 13, 1861, “Letters Sent by the Confederate Secretary of the Treasury,” Microfilm Publication M500, roll 1, RG 65, National Archives.

³⁰Josiah Bell to Christopher Memminger, October 12, 1862, “Letters Received by the Confederate Secretary of the Treasury, 1861–1865,” Microfilm Publication M499, roll 6, RG 365, National Archives.

tiable goods" were bypassing his Gulf port and going on to Corinth, Mississippi, to land because there was no collector in that place. In April, he disclosed, a "Crowd" in town "hoisted a Union flag on a pole 125 feet high and say that they have 200 men who intend to die under it sooner than it shall be hauled down." In the meantime, although on a small salary, he had collected no revenue for the government. Yet the port survived, a symbol of Confederate sovereignty in an area that apparently harbored extensive sympathy with the Union.³¹

Confederate sympathy did not always extend to nearby foreign nations engaging in illegal traffic.

THE CIVIL WAR: CUSTOMS PROBLEMS WITH FOREIGN CONTRABAND

From the beginning of the war, Salmon Chase moved heaven and earth to prevent U.S. goods from arriving as contraband in the Confederacy via foreign ports. The rich source material available on the subject makes it clear that the U.S. Customs Service did a first-rate job in heading off most of that contraband. In so doing it had to enforce laws that were deeply unpopular with important Americans, because of the huge profits in that illicit trade. Some few foreign ports were ingeniously exploited in the course of the war, despite everything Customs could do to prevent it. Enforcement was consistent enough and active enough, apparently, to cut off most of that trade.

As early as June 1861, Secretary Chase, in a series of circular letters and official communications, laid down some detailed rules about trading with the enemy. The key to enforcement was his allocation of special powers to collectors and surveyors in the most sensitive ports.³² The countries usually singled out, for

³¹ Ibid., Samuel Beall to Christopher Memminger, April 11 and 17, May 1 and 16, 1861.

³² Salmon P. Chase to James C. Sloo (Surveyor, Cairo, Illinois), June 1, 12, 1861, Chase to Lysander R. Webb (Surveyor, Peoria, Indiana), June 6, 1861, Chase to William Mellen (Special Agent, Cincinnati), and passim,

obvious reasons, were Mexico and Canada and the Spanish colony of Cuba.

Although many avenues to Mexico were blocked off, Matamoras remained a problem for the entire war. Goods for the Confederacy transshipped through Matamoras originated from such distant ports as Boston and New York. As early as July 1861, Chase provided incoming Boston Customs Collector John Z. Goodrich with discretionary powers to cut off contraband trade originating in Boston and destined for Mexico. If the Boston loophole was mostly plugged, as late as 1864, New York still offended. "Trade now carried on with the insurgents," General E.R. Canby reported, continued "from New York and other Northern ports through the Mexican port of Matamoras." It was done very cleverly and on a large scale: "Casks and crates of crockery freighted with rifle and musket barrels, bales of codfish with the small parts of the arms, kegs of powder in barrels of provisions" were "constantly transferred to the insurgents in Texas." ³³ Matamoras was hard to shut down. Once goods reached there, it was a relatively simple matter to pass them overland to Texas.

Havana, Cuba, also posed a serious enforcement problem, although judging by the relative paucity of complaints after 1861, a diminishing one. Because of its exposed position, Key West, Florida, remained in U.S. hands. Union blockade ships operating from Key West were always a threat to interdict traffic to and from Havana. Complications notwithstanding, the war materials manufactured in the North were so desperately needed in the South that almost any risk was worthwhile. "I am advised

"Letters Sent Relating to Restricting Commercial Intercourse," BE Series, 1861-1863, Entry 316, RG 56, Treasury Department Records, National Archives. This collection is rich in detailed correspondence from the Treasury Secretary to customs personnel in general, and specifically strong on the subject of dealing with contraband.

³³ Ibid., Salmon P. Chase to John Z. Goodrich, June 19, 1861, Chase to William H. Seward, July 30, 1861, Chase to Hiram Barney, July 31, 1861; E.R. Canby to Charles Halleck, December 9, 1864, "Correspondence, 1862-1865, New London," RG 36, Bureau of Customs Papers, Federal Records Center, National Archives, Waltham, Massachusetts.

by the State Department," Secretary Chase wrote Boston Collector Goodrich in December 1861, "that information has been received there, from the Consul at Havana, of the arrival at that port of vessels from the ports of the United States, conveying munitions of war, concealed in barrels and other packages, purporting to contain vegetables and other innocent articles of trade." Chase told Goodrich to do whatever was necessary to nail the ships' masters and "shippers or consigners" guilty of the smuggling. The collectors at New York, Baltimore, and Philadelphia got similar letters.³⁴ Not counting on the blockade, Chase wanted to cut off Cuban trade at its sources.

The Massachusetts ports of Salem and Boston seemed to be the most frequent and systematic offenders. Collector Willard Phillips at Salem told Chase that, so clever were the community's merchants in smuggling gunpowder out of the understaffed port, there was no way he could stop it short of supervising the loading of every vessel bound for Havana. Hearing this, a disgusted Chase took the simple expedient of barring all gunpowder shipments from Massachusetts ports bound for Cuba on any pretext whatever, on the ground that "the powder finds its way . . . into the hands of insurgents." Toward the end of October 1861, Chase expanded his ad-lib embargo, telling Salem's collector "to allow no shipments of munitions of war of any description, from your port to [all of] the West Indies." That informal embargo seemed to have worked to a degree to cut the contraband traffic that found its way to the Confederacy via the Caribbean.³⁵

If the Caribbean loophole was shrunk by the end of 1861, enterprising American businessmen found ingenious ways to move further southward in search of illegal profits. One particularly enterprising scheme involved Central America. As late as

³⁴ George Harrington to John Z. Goodrich, September 3, 1861, and passim, "Letters Sent Relating to Restricting Commercial Intercourse," BE Series, 1861-1863, Entry 316, RG 56, Treasury Department Records, National Archives.

³⁵ Salmon P. Chase to John Z. Goodrich, October 4, 1861, Chase to Willard Phillips, October 7 and 22, 1861, Salem Custom House Papers, 1861 File, Essex Institute, Salem, Massachusetts.

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1863, shippers in San Francisco claimed the lenient privileges of coasting regulations (no clearances needed), to ship goods to Panama and Nicaragua on small coasting vessels ostensibly bound for other Pacific ports. From the Western Isthmus, the goods were transported the 10 miles overland to the East Coast and then northward to Confederate ports. A harassed Chase wrote the San Francisco collector that it was not coasting trade if the vessels were secretly offloaded "in foreign territory." He found the entire intrigue "peculiar" given the obvious cost of the long shipments; clearly, price was not a factor to a munitions-starved Confederacy, however.³⁶

Canada also remained a thorn in the Union's side. By September 1861, the Canadians were suspect. "Has your attention been attracted to the large increase in the importations into Canada?" a U.S. Senator wrote Chase. "This increase can hardly be accounted for by the natural laws of trade. Is there no ground for suspicion that the goods are intended to be smuggled across our frontier into the Seceded States?" The suspicions were all too well founded. "Large cargoes of Block-tin, drugs and powder are exported from Boston, for St. John's, New Brunswick, with the intent, it is believed, to forward them to the insurgent states by way of Havana," a Treasury Department official wrote Boston Collector John Goodrich.³⁷

CUSTOMS AND TREASURY: BUSINESS AND POLITICS

Even in the face of towering enforcement problems during the most catastrophic war in American history, the business of

³⁶Salmon T. Chase to T.G. Phelps, February 16, 1863, Copies of Special Letters, 1861-1865, Salmon P. Chase Papers, Historical Society of Pennsylvania, Philadelphia.

³⁷H.B. Anthony to Salmon P. Chase, September 10, 1861, "Letters Received from Congress, 1836-1910," Entry 133, RG 56, National Archives; George Harrington to John Z. Goodrich, September 3, 1861, "Letters Sent Relating to Restricted Commercial Intercourse," BE Series, 1861-1863, Entry 316, Treasury Department Records, National Archives.

politics—in New York and elsewhere—went on as usual. The teeming port of New York, with its hundreds of customs personnel, continued to operate on the edge of the law, despite the flight of two notorious collectors and at least two congressional investigations in the Age of Jackson. The problems were so deep-seated—and almost institutionalized in fact by 1860—that even the impending crisis did not stop some very shoddy practices.

Hiram Barney was appointed customs collector for the Port of New York in 1861, one of the first acts of Treasury Secretary Salmon P. Chase. To understand the range of Barney's activities within the Customs Service in the Civil War years, it is important to understand precisely that money was the basis for the relationship between the collector and Chase—a harsh accusation, even more than a century later, but one all too self-evident. On the day Lincoln was inaugurated, Barney was nominated. For weeks before the inauguration, Chase was appalled to learn that rumors of a loan from Barney to Chase floated around New York City's countinghouses. Incredibly, Chase, in a letter to Barney on Inauguration Day, acknowledged the "loan." Deeply in debt as he left his native Ohio for Washington, Chase told Barney that he used the money to buy and furnish a house in the District of Columbia. It "enabled me," Chase wrote, "to pay my debt, relieve my property [in Ohio] from encumbrance and make sale so as to provide means of payment" for the Washington property. The amount of the loan that Chase mentioned was in excess of \$45,000, and the Secretary acknowledged that Barney had "raised the money" from others, presumably within the New York merchant community.³⁸ It is possible that the "loan" was repaid, though a cynic would like to see evidence of that.

³⁸Salmon P. Chase to Hiram Barney, March 20, 1861, "Copies of Special Letters, 1861-1865," Salmon P. Chase Papers, Historical Society of Pennsylvania, Philadelphia. The authors have not seen this letter cited anywhere else in the above context, but it is so clear that the loan at best was unethical—and at worst malfeasant—that it is hard to escape the conclusion that Chase effectively sold the most lucrative office in the nation to the highest bidder.

Only in this context is it possible to make sense of Barney's complex involvement in what amounted to national economic matters. He made a fortune; at least one historian believes that the Treasury Secretary also made a fortune on his coattails.³⁹ In any event, the range of Barney's activities was astonishing. By 1863, he was designated "cotton agent" for the Union, the recipient of all cotton produced in occupied areas of the South. As such, he was authorized to sell it in the name of the government, pay off the planters who grew it, and pocket the five percent commission on the sale price. By 1863 also, he was the government's agent authorized to receive and sell any disposable property seized in the South, again taking five percent. This specifically included cotton as well as a smorgasbord of other goodies ranging from oysters from beds off Virginia to a personal library seized at Beaufort, South Carolina. After the Emancipation Proclamation, part of Barney's duties included oversight of freed black labor engaged in cotton cultivation. This was done by means of agents on the spot, whom Barney appointed; they were often customs collectors in such places as Port Royal and Beaufort, South Carolina, and New Orleans (ports already in Union hands).⁴⁰

³⁹Without going into the wealth of detail that the book provides, including the evidence of corruption uncovered by yet another congressional committee looking into the activities of the New York customhouse in the Civil War, Chase and Barney were locked together in a far-ranging series of money-making schemes. See Thomas Graham Belden and Marva Robins Belden, *So Fell the Angels* (Boston: 1956), pp. 102, 104, 134, 140, 201, 245-46, 264, 274, 277, and 343. The book is a detailed study of Chase's public career, and the role of his daughter Kate and that of her husband Senator William Sprague of Rhode Island.

⁴⁰For some samples of Barney's complex activities and Chase's relationship with him, see Salmon P. Chase to William Reynolds, February 28, 1862, Chase to Hiram Barney, February 28, August 11, 1862, August 21 and 22, 1863, and passim, "Letters Sent Relating to Restricted Commercial Inter-course," BE Series, 1861-63, Entry 316, RG 56, Treasury Department Records, National Archives; Chase to Barney, undated (between March 18 and June 25, 1864), Chase to Hannibal Hamlin, June 25, 1864, Copies of Special Letters, 1861-1865, Salmon P. Chase Papers, Historical Society of Pennsylvania, Philadelphia; Barney to Chase, February 20, March 13, 1863, T. Hasbrook to Chase, March 25, 1864, and passim, "Damage Cases, New

All these activities were legal engagements recommended by Chase and approved by Congress and the President. Congressional investigations revealed a whole range of extralegal and illegal operations in which Barney was involved.⁴¹ All the income accrued from these legal and illegal deals was in addition to Barney's emoluments as customs collector for the Port of New York, understandably long believed to be the most lucrative post in American government.

If it was a matter of "business as usual" during the Civil War, politics also continued as usual, as instances in New York and Salem suggest. New York's Republican Century Club sent to Chase a list of Republicans whom the political club wanted appointed to the customhouse. Chase told the club president that he would send the list to Barney, adding "I trust" the local Republican party "will [not] have cause to be dissatisfied." Nor was it. In the letter to Barney that accompanied the list, Chase urged Barney to "expedite removals and appointments a little, so as to remove all decent ground of complaint." The Treasury Secretary also asked Barney to appoint the brother of a close friend, although in general Barney, like his predecessors, was given wide latitude in assuaging party interest locally through customhouse appointments.⁴²

New York was not the only place where politics intruded. In Salem, Collector Willard Phillips fined merchant Daniel Jewett for a breach of customs law in 1861. The merchant wrote indignantly to Chase, asking him "if this is the treatment I am to receive for having from the commencement acted a prominent part, and *subscribed liberally* in sum of money to advance the interests of the Republican Party." Jewett went on to denounce the collector and threatened to make no more contributions to

York, Philadelphia, Boston, 1863-1864," Entry 98, RG 56, Treasury Department Records, National Archives.

⁴¹ Ibid. See also Belden and Belden, *So Fell the Angels*, passim.

⁴² Salmon P. Chase to Hiram Barney, May 29, July 15, 1861, Chase to W.C. Gould, July 15, 1861, Copies of Special Letters, 1861-1865, and Chase Letters and Drafts, 1825-1863, respectively, Salmon P. Chase Papers, Historical Society of Pennsylvania, Philadelphia.

the party in the future. Phillips defended his action to Treasury and noted in advance he would not back down in the face of any pressure from Washington.⁴³

Willard Phillips' resistance to political pressure was the rule and not the exception in the highly charged atmosphere of the Civil War years. Once again the U.S. Customs Service found itself underfinanced and understaffed, yet asked to implement exceptional wartime controls against an enemy only miles away. The Customs Service by now was subject to institutionalized pressures from a complex patronage system linking the Service to the well-being of the political party system; not even the Civil War breached that time-tested relationship. The response was remarkable under the circumstances, for, by and large, the Customs Service kept smuggling within bounds and provided important revenue that helped the Government to finance the war effort.

Perhaps the only way to measure its success is to compare it with the dismal record of the Confederate Customs Service. In the end, however, the Civil War experience fed into a final era of rampant political corruption that would cause the backlash that produced civil service reform. And reform would catapult the Customs Service into the 20th century as a highly professionalized arm of government.

⁴³Daniel Jewett to Salmon P. Chase, November 4, 1861, Willard Phillips to George Harrington, November 11, 1861, 1861 File, Salem Custom House Papers, Essex Institute Historical Collections, Salem, Massachusetts.

Chapter VI

CUSTOMS IN THE GILDED AGE: CORRUPTION AND REFORM, 1865-1900

The years following the Civil War were years of rampant national political dissipation. Under the Grant regime, fiscal and political chicanery reached the level of high art, touching not only most government agencies including the Customs Service, but overtaking Congress, the Cabinet, and the executive branch itself. Institutionalized dishonesty throughout the federal government, however, triggered an inevitable reaction that resulted in 1883 in the Pendleton Civil Service Act. This act was only a beginning, however, and civil service reform only gradually cleaned up the federal establishment. Despite the rampant dishonesty of these years, most customs officers tried to do the right thing; even in New York, some attempted to stave off the worst importunities of "spoilsmen" who used the customhouse as a patronage and financial reservoir, with inevitable erosion of morale and fiscal integrity. By 1900, however, the U.S. Customs Service, mostly freed from the politicization with which it had had to live for more than a century, was at last allowed to stabilize its work force, raise morale, and enter the next century as an increasingly professional organization.

INTERNAL RESTRUCTURING: APPRAISERS, SPECIAL AGENTS, AND MARINE HOSPITALS

Civil service reform efforts were accompanied by important clarifications of customs operations emanating from Washing-

ton. The Customs Division as a separate branch within Treasury was created informally in 1869. Six years later, in 1875, the administrative reform was completed with the official creation of the Division of Customs within the Treasury Department. A decade later the Division received its first independent congressional appropriation, a better barometer of its growing autonomy as a unit of government than administrative directives.

This was a time when, paradoxically, corruption within the federal establishment generally—Customs included—was rampant, but it was also a period of incipient reform. An early mark of that reform was the professionalization of the office of appraiser of merchandise. By the end of the Civil War, full-time appraisers were at work in the customhouses of New York, Boston, Philadelphia, San Francisco, and New Orleans, with the New York appraising operation forming the model. An act of 1866 upgraded the position and professionalized it, requiring specialized qualifications for the position and additional personnel; the act was designed to render the appraising function as autonomous as possible, particularly in the notorious New York City customhouse, and to give the appraisers the means to do the job. The appraiser, under new legislation, was placed directly under the President and was not answerable to the port collector of customs. In 1870 offices of appraisal were established in 15 more customhouses in the South and West; seven more had been added by 1890.

In this year, as civil service rules began to take hold, new legislation reformed the office again. The new law granted general appraisers judicial authority to mediate and resolve disputes between merchants and Customs, raised appraisers' salaries to \$7,000 per year, and specified that only five of the nine general appraisers authorized in the nation could be from the same political party. If some early signals are correct, the restructuring that took place between 1870 and 1890 significantly improved customs operations. For example, the first new appraiser for New York appointed under the 1870 legislation was both an attorney and a long-time business manager for the *New York Times*. As for the 1890 legislation, during the first three months after their appointments,

the nine new general appraisers cut nearly in half the pending backlog of cases in New York and elsewhere.¹

Despite this auspicious beginning, the appraiser's office, in New York at least, soon sank to the level of misuse of trust habitually found in the collector's office.

After years of on-again off-again flirtation with special agents, meanwhile, the Treasury Department finally committed itself to their employment as customs personnel. They had proved invaluable to Salmon Chase during the Civil War, both in investigating internal affairs and in ferreting out channels of illegal smuggling through Union ports to the Confederacy. Nevertheless, at war's end, the Treasury Department was still unwilling to commit itself to a permanent force, and special agents again virtually disappeared from the customs scene. Only in 1870, when legislation approved them for customs, were special agents permanently restored to the government rolls. From this point, special agents remained a constant force in the new Division of Customs.²

If one new agency was thus added to the ranks of Customs, another passed from its hands after nearly a century of administration. Customs was gradually phased out of the marine hospitals beginning in 1870; by the 1890's the Marine Hospital Service was entirely under the jurisdiction of the new Public Health Service. The act of 1798, establishing the Marine Hospital Service, provided that customs collectors in the ports where hospitals were established should collect fees from every arriving ship, the fee to be determined in accordance with the number of sailors aboard. The money was administered by the collector for the relief of sick and disabled seamen, who would be hospitalized in the nearest marine hospital at a heavily subsidized cost to the sailor of only 20 cents a day. The collectors paid retainers and

¹ A detailed examination of these administrative reforms can be found in Michael N. Ingrisano, Jr., *A History of the Appraiser of Merchandise, 1789-1966* (Washington, D.C.: 1984), chapter 4, pp. 1-3, 7, 9, 18.

² Michael N. Ingrisano, Jr., *A History of Enforcement in the United States Customs Service, 1789-1875* (Washington, D.C.: 1986), chapter 5, pp. 1-2.

per-patient fees to local physicians to tend the sailors. All collectors involved kept meticulous records; in almost 100 years of administration, little scandal tainted that trust.

The operation of the marine hospital at Salem, Massachusetts, followed this general pattern. In addition to the 20 cents the patient paid, the Marine Hospital Fund paid \$2.50 per day for each sailor's treatment. Regional American civilian hospitals could not possibly have confronted the range of exotic diseases afflicting the seamen, whose average life expectancy was 12 years after putting out to sea. An 1851 roster of patients disclosed that in one month the Salem Marine Hospital admitted tars ill from the effects of African fever, rheumatism, venereal herpes, various exotic forms of scrofula, frostbite, and some fractured bones and lung complaints. Every conceivable form of venereal disease could usually be found among the ranks. For nearly a century, the hospital served also as a refuge or boardinghouse for sailors in a strange port. When the government began phasing out the hospitals in 1870, fewer and fewer patients were admitted, and on March 30, 1893, the Salem Marine Hospital finally closed its doors. By government contract, from that date, the Salem Hospital in town would accept maritime patients for \$2.50 per day, agreeing also to "bury patients at \$15 each."³ That was one grim task from which every customs collector was glad to be free.

CUSTOMS BEFORE REFORM: THE LAST HURRAH IN NEW YORK

Victimized by the absolute reign of political influence as well as the general corruption of the Grant administration, the New

³ For the history of the Salem Marine Hospital, see "Register of Permits to Enter Maritime Hospital at Salem," Salem Customhouse Records, Salem Maritime Historic Site, Salem, Massachusetts; Edward L. Millett to Parker Bray, March 30, 1893, and Robert Austin to Bray, April 6, 1893, Salem Customhouse Correspondence File, Essex Institute Historical Collections, Salem, Massachusetts; "List of Permits Issued to Applicants for Admission to Hospital," Records of Entrances, Hospital Dues and Clearances, Essex Institute; and Robert Straus, *Medical Care for Seamen: The Origin of Public Health Services in the United States* (New Haven, Conn.: 1950), pp. 11-12 and *passim*.

York City customhouse was at once the most dramatically flawed agency in government and the focal point of the earliest significant efforts to achieve a lasting reform of the system. Within weeks of succeeding Grant in 1877, Rutherford B. Hayes wrote in his diary, "Now for civil service reform." The government "must limit and narrow the area of patronage," he told himself. "We must diminish the evils of office-seeking." On April 23, 1877, he ordered Treasury Secretary John Sherman to appoint a commission to investigate the New York customhouse. John Jay, scion of a wealthy old New York family and a reformer in his own right, headed the commission. Although it would be some years before real reform would come to pass, the creation of the Jay Commission must stand as the point at which the journey toward serious civil service reform of the New York port began.⁴

The commission acted expeditiously and, by autumn 1877, had reported to Sherman, who in turn went to the President. In its thorough and devastating report, the Jay Commission called for "the emancipation of the customhouse from partisan control." ⁵ Hayes immediately pressed reform. "It is my wish," he wrote Sherman, "that the collection of the revenues should be free from partisan control, and organized on a strictly business basis. . . . No assessment for political purposes . . . should be allowed." ⁶ Why start with the New York customhouse? Simply put, it was, in terms of significance to the revenue of the United States, the obvious place to begin. The Port of New York

⁴*Diary and Letters of Rutherford Birchard Hayes*, Charles R. Williams, ed., 6 vols. (Columbus, Ohio: 1924), vol. III, p. 430. Ironically Sherman himself characterized in his person the need for generalized reform. Weeks before Hayes's instruction to initiate reform, he had importuned the customs collector at New York, in time-honored fashion, to appoint a friend to a sinecure in the customhouse. For a good study of the reform movement, see Ari Hoogenboom, *Outlawing the Spoils: A History of the Civil Service Reform Movement 1865-1883* (Urbana, Ill: 1961), p. 152n. and passim.

⁵*House Executive Documents, House of Representatives*, "Commissions to Examine Certain Custom Houses in the United States," 45th Cong., 1st Sess., Executive Document no. 8, October 19, 1877, pp. 14-15.

⁶Rutherford B. Hayes to John Sherman, May 26, 1877, *Diary and Letters of Rutherford B. Hayes*, Williams, ed., vol. II, p. 77.

collected 75 percent of the customs revenue turned in to the Treasury annually. The Customs Service, in turn, was by far the largest contributor to the nation's coffers, so the New York customhouse, which had receipts of \$108 million in 1877, was by far the largest single source of revenue for the United States in a given year.⁷

Reform, the Jay Commission concluded, must begin in New York. "The fidelity of [customhouse] management concerns at once our foreign commerce, our domestic manufactures, the general prosperity of our people, and the respect and confidence of the world." Jay summarized the cause of a problem that dated back to a generation before: "The question of political appointments," he wrote, "the recognition of a partisan power outside of the Government, divided among irresponsible leaders claiming the right to dispose of the offices of the customs as the spoils of party, assumes a national magnitude and importance." Corruption flowed from partisan evils. In New York, as in most customhouses, "officers are appointed through political influence, and are expected to make their offices contribute in turn to the support of the party." If the party in power itself was on the take, morale and the will to resist corruption in the ranks must have been severely impaired.⁸

The problems in New York were long-standing, and they had long been visible to the public at large. E. L. Godkin's reform-minded weekly *The Nation* made the customhouse a focal point for demonstrating the need for change. It began running articles endorsing reform as early as 1866, and it did not stop until the Pendleton Act was passed in 1883. By studying ongoing investigations by committees and agencies of Congress over the years, *The Nation* was able to deluge its influential readership with data. "The loss sustained through the frauds and waste and incompetency of the employees at the New York Custom House,"

⁷ *House Executive Documents, House of Representatives*, "Commissions to Examine Certain Customs Houses . . .," 45th Cong., 1st Sess., Executive Documents no. 8, October 19, 1877, p. 16.

⁸ *Ibid.*

it disclosed in 1866, “was estimated at ranging from \$12,000,000 to 25,000,000 annually.” The rank-and-file employees, generally willing and able workers, nevertheless “hold their places at will, are poorly paid, and have to submit . . . to their poor pittance docked nearly every year to assist in the payment of the electioneering expenses of their party.”⁹ By 1867, the magazine charged, the customhouse had become “a plum of corruption,” with its business “farmed out to knaves, who were to pay \$40,000 of \$50,000 a year for it.” (As we have seen, Collector Hiram Barney paid the Treasury Secretary that much for the post as early as 1861.) *The Nation* rarely let a week pass without some comment in its crusade for change. “Until the public service becomes a career to which men devote their lives, the temptation to grab off all one can during short terms of office will be so strong that the purest of men will fall victim to it.” Reflecting on the impact of the system on the honest employees, it added: “A man who won’t rob, now naturally finds his position untenable.”¹⁰

One such honest person was Collector Moses H. Grinnell, a former New York City Congressman, a founder of the Republican party locally, the president of a bank, and a past president of the city’s Chamber of Commerce.¹¹ Grinnell was already past age 65 when he received his appointment in 1870, in the wake of yet another public storm of indignation over blatant bribery at the port. He was chosen because of his impeccable credentials. His appointment was intended to provide a cosmetic overlay of honesty to mask ongoing problems and appease an aroused public.

Even though he understood from the beginning that he had been called in to save the game, Grinnell’s resistance to his

⁹*The Nation*, vol. II, no. 33, February 15, 1866. Other papers and journals were quick to pick up on these colorful stories. See, for example, *Harper’s Weekly*, vol. X, no. 479, March 3, 1866; *New York Times*, February 4, 1866; and *New York Tribune*, January 30, 1866.

¹⁰*The Nation*, vol. IV, no. 88, March 7, 1867. See chapter five for the details on the reference to Barney and Chase.

¹¹Michael N. Ingrisano, Jr., *A Biographical Directory of the U.S. Customs Service, 1771–1989* (Washington, D.C.: 1985).

coaches in both the corrupt Grant administration and the local customhouse soon sent him back to the bench. His experience is a commentary both on the viciousness of the system—imposed on Customs by outside political forces—and on the inability of single honest persons to change that system.

Only months after Grinnell took office, *The Nation* commented, "We believe it is generally acknowledged that he put as few rascals in office as was, under the present system, possible, and, in employing helpless and incompetent persons, employed the least helpless and incompetent." The result, according to Godkin's reform journal, was that he failed "in his duty to the party"; moreover, he "failed in his duty to the party almost in the direct ratio of his fidelity to the Government; for his duty to the Government required him to be particular about the fitness of his appointees, while his duty to the party required him to disregard fitness to the utmost possible extent."¹² When it became clear in Washington that Grinnell was not malleable, he was first demoted from collector to naval officer and then, less than two years after taking office, fired, along with George W. Palmer, a "competent and honest" appraiser of merchandise at the port.

Corruption at the Port of New York took several forms, some deriving from purely local situations, some resulting from dipping into the public till from Washington, D.C. It was widely acknowledged that senior customs officers, including appraisers of merchandise, regularly undervalued incoming cargoes to the benefit of merchants who paid bribes. It happened in the countinghouse, where superior officers reigned, probably more so than on the docks, where only relatively small-scale graft occurred.¹³

The exploitation of the system from the nation's capital was more subtle but no less pervasive. The career of Colonel George

¹² *The Nation*, vol. XI, no. 262, July 7, 1870.

¹³ For a complete account of corrupt practices in the New York customhouse in the Gilded Age, see Hoogenboom, *Outlawing the Spoils*, particularly chapters one, three and nine.

Leet is a case in point. While Leet was still on assignment to the War Department in Washington and collecting the pay of his rank, President Grant named him to manage the "general-order warehousing system," operating out of the customhouse. The way it worked was this: After merchants paid their duties, they were required to take possession of their goods within two days of the ship's docking. In practice, as the merchants well understood, this was not nearly enough time, given the lackadaisical work habits of the underpaid dock's longshoremen, who were themselves often encouraged by Customs to slow things down. So the goods would be turned over to a warehouse designated by the customs collector. The merchant was routinely charged both cartage fees and a month's warehousing and storage charge (usually for only a few days lay-up) in order to get his goods out of bond.

Leet made \$10,000 or more the first year (1870) and at least double that amount in each succeeding year, managing the whole operation from a distance through his own New York agent while he was on active duty at the War Department. It was Grinnell's uneasiness with this nationally oriented corruption over which he had no control that in part led to his quick dismissal.¹⁴

Meanwhile, it was different, but not better, on the docks. What was life like for a junior officer of customs at the Port of New York? Here is how one supporter of Inspector Herman Melville saw it, as he tried to save Melville's job. The famed writer, desperately in need of the income his customs post provided during his almost 20-year tenure in Customs, was habitually threatened with the loss of it because of his honesty, or so his friends claimed. J.C. Woodbury of Massachusetts was one of those friends who wrote Treasury Secretary George S. Boutwell in 1873 "to ask you, if you can, to do or say anything in this . . . quarter" on Melville's behalf, so that the writer could continue "the uninhibited enjoyment of his modest hard-

¹⁴ *The Nation*, vol. XIV, no. 341, January 11, 1872; and Hoogenboom, *Outlawing the Spoils*, pp. 102-03.

earned salary, as deputy-inspector of the Customs in the City of New York." Herman Melville was "Proud, Shy . . . he strives earnestly to perform his duties as to make the slightest . . . reprimand impossible from any superior. He quietly declines offers of money for special services, quietly returning money which has been thrust into his pockets . . . steadfastly doing his duty" in the face of temptation by "corrupting merchants and their clerks and runners, who think that all men can be bought." Melville, for his part, Woobury claimed, was "happy in retaining his own self-respect."¹⁵

Despite a decade of railing against the system, things in 1876—just before the Jay Commission investigation—were as bad as they had been in 1866. The Customs Service of itself tried repeatedly, according to the New York *Herald*, to maintain its professionalism, but that was impossible in the environment in which the New York customhouse operated. "Efficient and competent clerks, examiners, experts and other officials," according to the *Herald*, were "kicked out of office on trumped-up charges to make room for relatives and favorites who knew nothing of the needs or workings of the service."¹⁶

The appraisers by this time were doing as well as the collectors. "It is a fact more or less notorious among merchants," the paper reported, that the appraiser's office of the customhouse "is rotten throughout. . . . The place has become a disgrace even to the present administration." Customs Appraiser William A. Darling was forced to resign in 1876, precipitating the story. Darling was also secretary of the Third Avenue Savings Bank, where he spent most of his time. Treasury agents from Washington found widespread evidence of fraud and neglect. Tea, gloves, hams, silks—everything imaginable—were siphoned off for private sale or grossly undervalued after merchants had paid off the appraiser's agents. Larry Harney was Darling's

¹⁵J.C. Woodbury to George S. Boutwell, January 9, 1873, Personnel File of Herman Melville, Notable Persons File, U.S. Treasury Department Records, RG 56, National Archives.

¹⁶New York *Herald*, March 22, 1876.

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deputy as well as his political trouble-shooter on the spot at the docks. Whenever "subordinates are to be assessed for electioneering or other purposes, Harney calls them together . . . and announces the amount of the tax. Forthwith the money is produced and handed over to Harney, who hands it over to Darling."

Examiners in the appraiser's office were also in on the scheme. They "borrowed" money from brokers, anywhere from \$50 to \$500, to get shipments underappraised and cleared quickly. "It is not claimed that all the examiners in the Appraisers' Department indulge in this business," the *Herald* concluded, "but that several of them have done it and still do it is susceptible of proof at any time." Darling was ultimately tried and convicted, not of corruption in the customhouse, but of defrauding his bank—a charge that had its origins in the investigation of the customhouse. He was but one minor public official convicted in the wholesale exposure of corruption in the Grant administration.¹⁷

THE LAST HURRAH: THE NATION AT LARGE

The problem of corruption was not limited to the Customs Service; it plagued every branch of the federal government. Nor was it limited to New York City. Philadelphia also suffered from the corruption that was built into the system in the Gilded Age, and good men operating without good laws could not stop it. The case of Henry Dunning Moore, collector at Philadelphia from 1869 to 1871, is proof of that. His tenure and removal paralleled those of Moses Grinnell in New York. During his brief leadership the Philadelphia customhouse was held up as the model of probity. Even his political enemies agreed that Moore "attends to his duty and transacts public business honestly." But, a Republican newspaper asserted, "What is the use of appointing Republican officials if they do not help Republican

¹⁷Ibid.

principles?" His "honest and faithful collection of the public revenue" did not save his job. His enemies in the party asked, what have "respectability and honesty to do with the administration of the Custom-house, or his services to the party? Our charge is that the Custom-house was a spiked Republican gun in the late canvass." Moore's sin was that he did not permit customs personnel to pay part of their emoluments into party coffers, nor did he force them to serve as party workers at the election. He, like Grinnell, was removed and replaced with a more politically malleable collector.¹⁸

What followed was an echo of the New York situation, on a smaller scale, according to the Jay Commission. By 1876, New York practices had taken hold in Philadelphia. The Philadelphia Centennial Exposition of that year, which dramatically increased the import volume of the port and created difficulties involving special handling of valuable incoming exhibits from abroad, exacerbated the problem. Despite these pressures, the naval office remained a sinecure, symbolizing the attitude that spawned low morale and finally bribery. "We consider the naval officer deficient in proper attention to business," the Jay Commission reported to Congress. "Nine-tenths of his work is done by the deputy." Naval Officer John A. Heistand was very frank with the commission: "He considered his presence and position superfluous, but thought, in as much as the place and salary were provided for by law, he might as well have the benefit thereof as any one else."

Well he might think that. Heistand was the publisher of an influential Philadelphia Republican newspaper, as was E. B. Moore, the appraiser of merchandise in Philadelphia. The Jay Commission found that Appraiser Moore was not often around the customhouse either. The commission noted a "general negligence and incapacity in making the appraisements and returns; of failure to personally supervise this and other work; and of loss of duties through incapacity or neglect, in failing to detect and report

¹⁸ *The Nation*, vol. IX, no. 231, December 2, 1869.

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. . . alleged underevaluations in certain cases which had been called to his attention." Perhaps nothing more could be expected from party hacks in high and lucrative office, but the impact on integrity and morale in the ranks was disastrous.¹⁹

Cogent evidence of this was available in the surveyor's office, the post responsible for the operation of the "sampling room," where samples of imported alcoholic beverages were tested and assessed. In practice, however, "The sample-room was, more or less, a place of resort for refreshment," the Jay Commission charged, "by officials and their friends, including, as is said, special agents and others from Washington."²⁰

Other more or less "normal" abuses prevailed, too, as might be expected when two of the chief officers of the port were absentee, politically connected newspaper publishers. Assessment for "political purposes" was rampant in the port within five years of Moore's departure. The political assessor, or "tax gatherer," as he was colloquially called, sat "at the entrance of the cashier's department on pay-day, and intercepted each employee as he was paid off." The object was to "mulct him in two per cent of his salary." An additional two percent was expected as a "voluntary" contribution. All employees were described by the collector as "cheerful givers!" The system was a generation old when the Jay Commission addressed itself to this political institution.²¹

Things were not much better in other parts of the nation. Although the Jay Commission gave San Francisco a clean bill of health, special agents operating out of the Treasury Department in 1876 found a different story. In far too many instances, the agents found, "the luggage of passengers arriving from foreign ports was delivered to the owners without any examination, and that this was done by special order from the collector." By this means, according to the report, "hundreds of thousands of dollars worth of mer-

¹⁹*House Executive Documents, House of Representatives*, "Commissions to Examine Certain Customs Houses . . ." 45th Cong., 1st Sess., Executive Document no. 8, October 19, 1877, pp. 75, 82, 84.

²⁰*Ibid.*, p. 89.

²¹*Ibid.*, p. 99.

chandise is brought into San Francisco and passed without payment of duty"; the goods included whiskey, cigars, and works of art. Favoritism shown to locals, rather than systematized corruption, seemed to be the root of the problem, the agents concluded. "The whole business of commerce seems to be conducted in the interests of Californians, and the interests of the Government are totally ignored."²² Even the Jay Commission noticed a similar favoritism spilling over into the appraisal of merchandise. Appraisers "had been guilty of gross carelessness, if nothing worse," according to the 1877 report to Congress.²³

Local officers blamed politics for staff failings. The port collector himself freely acknowledged "that appointments had, as a rule, been dictated by political influence." That was the universal state of things in the 1870's and 1880's, as it had been for years.²⁴ Party affiliation and involvement counted for everything. At Oakland, under the jurisdiction of the collector of customs at San Francisco, "the taint of political motives" was evident in the punishment of transgressions by inferior customs officers. "Offenses which were condoned in men of one political faith were punished with the dismissal of men of the opposite political faith." For the same offense, a Democrat was removed from his job, while a Republican "was actually retained in the service without the loss of a day's pay." The collector, when confronted with this charge, responded "that the removals follow very generally the recommendations of the Treasury officials, which . . . are shown to have been closely along political lines, the removals having been almost wholly of employees of one political party."²⁵

²²*New York Tribune*, April 18, 1876.

²³*House Executive Documents, House of Representatives*, "Commissions to Examine Certain Customs Houses . . .," 45th Cong., 1st Sess., Executive Document no. 8, October 19, 1877, p. 132.

²⁴*Ibid.*, p. 133.

²⁵John R. Proctor to John Wise, June 13, 1895, "Letters to the Collector From the Secretary of the Treasury Re: Personnel," Box 1, Series 13, RG 36, U.S. Bureau of Customs, Port of San Francisco, Administrative Records 1857-1947, Federal Records Center, San Bruno, California.

Corruption and Reform

The New Orleans customhouse also fell into the trap of mismanagement along a broad front of responsibilities. The collector, accused of absenteeism, refused to give the Jay Commission any information on his attendance to business in 1877; the commission had no subpoena powers and could do nothing but report to the President the collector's refusal. A favored warehouse was used for storage of cleared goods awaiting pickup by merchants, and the cost of drayage to that warehouse was higher than anywhere else in the nation. In the appraiser's office, examined packages were routinely left open and samples taken by the staff. The appraiser or his aides rarely questioned the merchant's appraisal of the goods' value, suggesting "great elasticity of conscience" in that office, according to the commission. Inspectors commonly boarded incoming ships and took their meals there before proceeding to the business of inspecting the cargo. The collector considered himself under the protection of Treasury Secretary John Sherman. A political ally of Sherman's, he seemed not to fear the result of the Jay inquiry, and with good reason, for only minor reforms occurred in that southern port as a result of the investigation.²⁶ In the meantime, however, on a much larger stage, the seeds of civil service reform were taking root.

REFORM: GRANT, HAYES AND CUSTOMS COLLECTOR CHESTER A. ARTHUR

Facing serious and increasingly public allegations of corruption from the "Mugwumps" (the reform element of the Republican party) and progressive journals like *The Nation* and *Harper's Weekly*, the Grant administration in 1871 proposed some cosmetic changes in the operation of the U.S. civil service

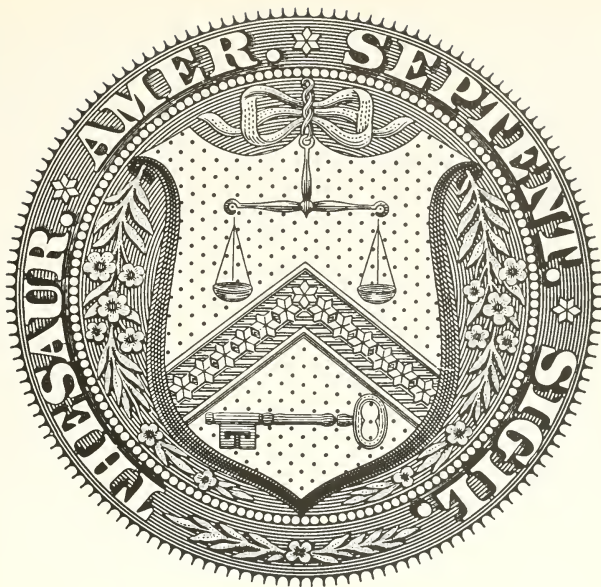
²⁶ *House Executive Documents, House of Representatives*, "Commissions to Examine Certain Customs Houses . . .," 45th Cong., 1st Sess., Executive Document no. 8, October 19, 1877, pp. 108, 110-11, 114; Hoogenboom, *Outlawing the Spoils*, pp. 180-81.

in general and the Customs Service in particular. The changes sounded good, but the immediate impact was small. Still, the scent of reform hung in the air during the 1870's. Political influence in appointments and removals was denounced, for the time being with no visible effect. The same applied to removal from office of one's party enemies. Competitive examination for all appointees was suggested but not implemented. A virtually powerless Civil Service Commission was established. The only reform to take effect before the Hayes presidency was the abolition of the moiety system.

The immediate history of this system dated back to the Age of Jackson but, in fact, moiety was a modification of a long-established British customs device evident, for example, in the American colonies before the Revolution. The system encouraged customs employees to detect fraud by allocating one-third of the proceeds of the sale of confiscated goods to the government, one-third to the informer, and one-third to the collector and other port officers. Income from moieties "amounted to much more than the salaries of customs officials in larger ports" in the Gilded Age; it also led to uneven customs enforcement. Selective payoffs, for example, were encouraged by merchants who did not want close inspection of their imports (even as others were "discovered" in the act of fraud); it also set the scene for wholesale invasions of privacy.²⁷

The chief sacrificial lamb offered up in the termination of moieties was New York City Customs Collector Chester Alan Arthur, a political lieutenant in the New York Republican machine headed by Senator Roscoe Conkling. The latter was the most notorious of the "spoilsmen" in the Gilded Age, an epithet invented by the Mugwump reformers of the era. Arthur, a New York City lawyer, was tarred with the same brush when he accepted the lucrative customs post under the sponsorship of the Conkling wing of the Republican party in 1871. The new collector netted more than \$50,000 per year at that post for the

²⁷ Hoogenboom, *Outlawing the Spoils*, p. 104.



Seals of the Treasury Department, 1820-date.



Treasury Department seal used on
Customs Regulations, 1874-1900.



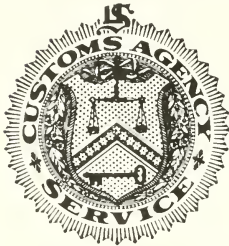
First seal known to use the name,
U.S. Customs Service, 1880's and 1890's.



Collector seal, 1890's-1911.



Customs seal, 1930-72.



Customs Agency Service seal, 1930-82.



Customs seal until 1966.



Customs seal, 1960's.



Customs seal, 1960's.



Customs seal, 1973-present.



Customs logo appearing on shoulder patches of uniformed employees.



Defying the embargo, 1807-09.

Document of registration for the
SS SAVANNAH, issued August 25,
1820. The SAVANNAH was the
first American steam-powered
vessel to cross the Atlantic.

Temporary

No. 13



UNITED

STATES



In pursuance of an ACT of the CONGRESS
of the United States of America entitled AN ACT
concerning the registering and recording of Ships or Vessels

Nathan H. Holdridge master
of the City and State of New York
having taken and subscribed the oath required by the
said Act, and having sworn that he is the



only owner of the Ship or Vessel called the *Savannah*
of New York which said *N. H. Holdridge*
is at present Master and is a citizen of the *United States*
as he hath sworn

and that the said Ship or Vessel was built at New
York in the year eighteen hundred and
registered as per Register No 38 granted at
Savannah the 6 May 1817 and is now en-
gaged in consequence of a new owner

And said Register

having reported that the said Ship or Vessel
has the deck and beam made and built

her length is twenty eight feet six inches
her breadth twenty five feet ten inches
her depth fourteen feet two inches
and that she measures three hundred
cubic feet

that she is a square sterned ship a round
stern and galley

And the said *Nathan H. Holdridge* having
agreed to the description and measurement above specified and
sufficient security having been given according to the said
Act the said Ship has been duly registered at the Port of
Savannah

Given under my hand and seal of the Port
of Savannah this 25th day of August
in the year One thousand Eight hundred and twenty

REGISTER OF VESSELS

Vessel registration, 1820.

Andrew Jackson, President,
1829-37. The National Portrait
Gallery, Smithsonian Museum.



New York City Democrats
following Van Buren's election,
1837. Library of Congress.



*(Of Ex-Collectors, you're the man
I wear within my heart of hearts,
From pure regard, all that I can
I've done, and come to foreign parts
And though defaulter I may be,
& cause my party great regret.
Fees, when in Office due to me,
Will fairly balance all my debt*

First appearance

New Way to Pay and Debt

Raising the Wind

Catch him who can.



Printed & sold by A. A. Anderson, Stationer &c., No. 127

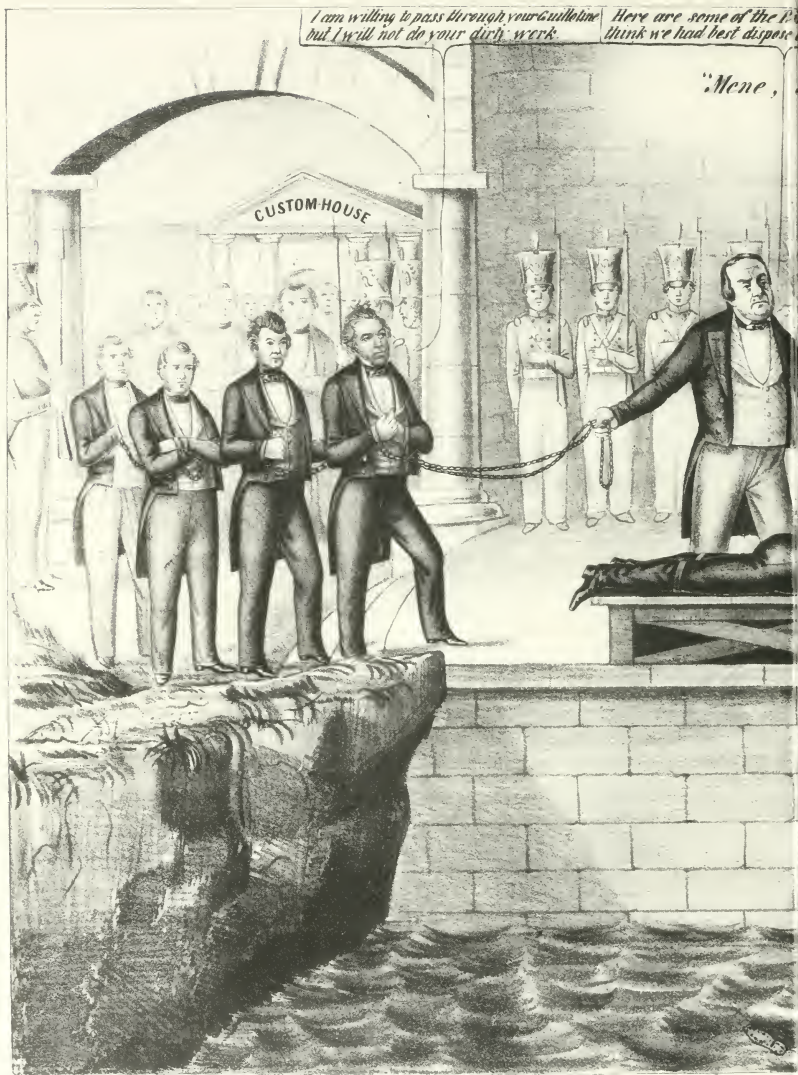
Caricature following New York customhouse scandals, 1838. Library of Congress.



Customhouse, New York City, 1842-63; now designated Federal Hall National Memorial.

Office seekers importune President Martin Van Buren, 1837. Library of Congress.





POLITICAL

Customs heads roll with the changing of the guard, 1848-49. Library of Congress.

ers I
first.

Bring them on Case,
I'll soon do their business.

Henry Clay, Free Soil
& No Slavery!

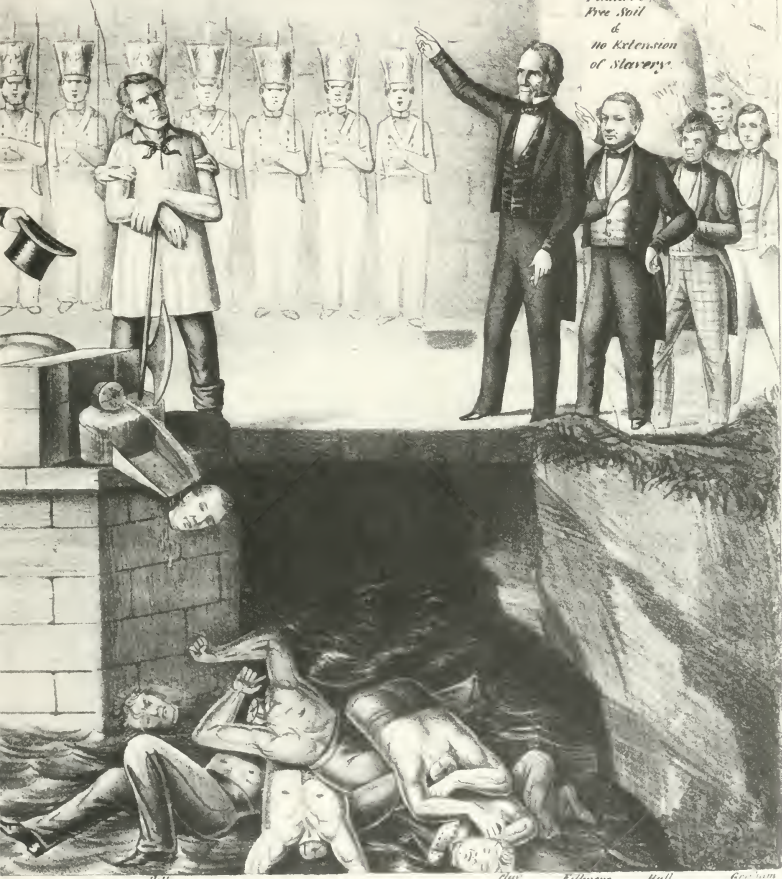
"Tekel Upharsin."

Henry for
Clay!

Clay & No
Availability!

Clay
Fillmore
Free Soil
&
No Extension
of Slavery.

Henry for Clay!



ILLLOTINE.

Park

Hay

Fillmore

Hall

Grassman

Nathaniel Hawthorne, Surveyor,
Salem, 1846-49.



Customhouse, Salem, Massachusetts,
1819.





THE CHINESE QUESTION
COLUMBIA.—"HANDS OFF, GENTLEMAN!" AMERICA MEANS FAIR PLAY FOR ALL MEN.

Thomas Nast caricatures hostility to Chinese immigrants, 1872.



THE BAR OF DESTRUCTION.

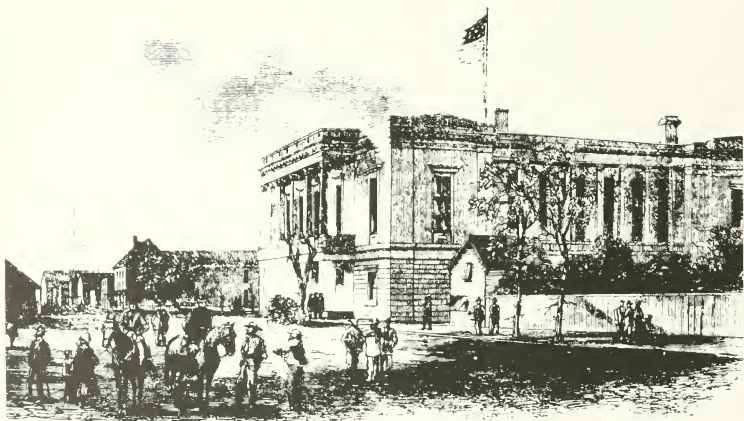


Chester A. Arthur, President, 1881-85.

◀ Prohibition cartoon by Thomas Nast, 1874.



Customhouse, Deming, New Mexico,
1888.



Customhouse, Galveston, Texas, 1861.

Theodore Roosevelt,
U.S. Civil Service
Commission, 1889-95.

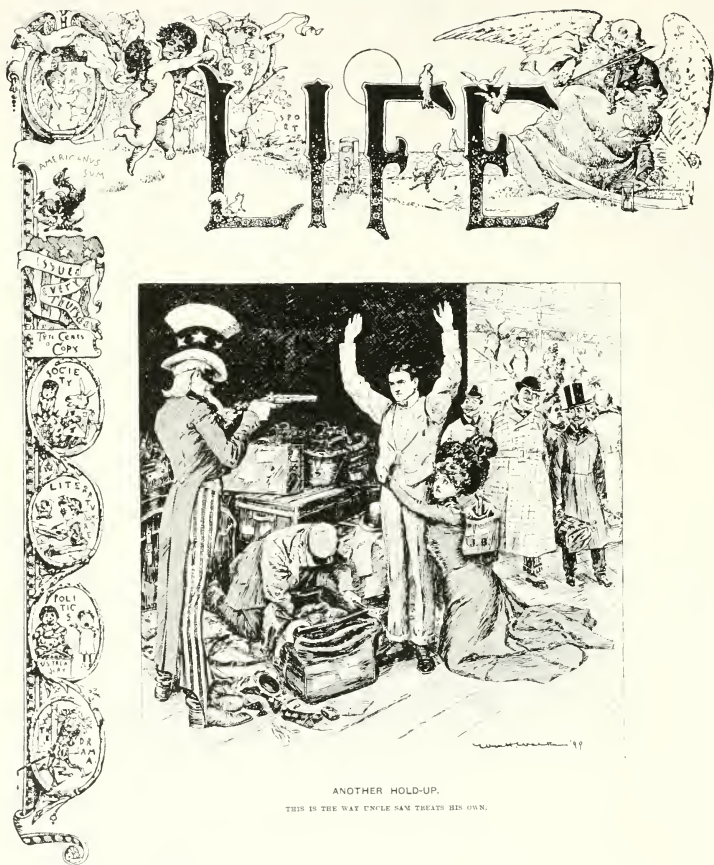


Customs officers,
Windsor Ferry,
Michigan, 1890's.



WINDSOR FERRY 1898

Entered at the New York Post Office as Second-Class Mail Matter.
Copyright, 1899, by LIFE PUBLISHING COMPANY.



ANOTHER HOLD-UP.

THIS IS THE WAY UNCLE SAM TREATS HIS OWN.

Popular perception of Customs' search procedure, 1899.

Corruption and Reform

next three years. In 1874, however, under intense pressure from the mounting exposure of corruption in high places, the Grant administration, among its token concessions to reform, abolished moieties; as a result, Arthur's income dropped to only his \$12,000 salary.²⁸

The public view of Arthur as the last of the corrupt, old-line machine spoilsmen to occupy the top spot in the port was reinforced by the attention he received in the reform press simply by being collector during the Jay Commission investigation. Horace Greeley's New York *Tribune* in April 1877 concluded that the New York customhouse, more than any other government operation in the nation, needed reform. It described Arthur as "able to do little more than sign a few papers which are presented to him in routine, and to give instructions to politicians." It also alleged that Arthur took no action when he received a list of names of customs subordinates who took money from importers "for what are called extra services but which payments in point of fact are little better than bribes." The *Tribune* was forced to acknowledge that "there are no accusations against Collector Arthur's personal integrity," but the implications of his laxity and complicity were clear: It was in the public interest that there be "a thorough reorganization of the [customs] service" in the port.²⁹

Arthur personally was accused of spending only a few hours a day at the port. Arthur (who was quoted only as an "official" of the Customs Service and not by name) responded angrily that he spent at least seven hours a day at his job, but much of that time he was perhaps not at the port because he had public business elsewhere. He also needed to work on public business, he said, in his own law offices in order to escape office seekers.³⁰

Public identification of Arthur as a spoilsman was inevitably reinforced by stories like this in *Harper's*, *The Nation*, and elsewhere and by Arthur's removal from the collector's office by

²⁸See Leonard D. White, *The Republican Era* (New York, 1958), pp. 123-126.

²⁹The New York *Tribune*, April 9, 10, 12, and 13, 1877.

³⁰*Ibid.*

Hayes not many months after the publication of the Jay Commission report. No wonder a disgusted U.S. Attorney General, Wayne MacVeagh, resigned immediately when Arthur became President. He, like Henry Adams, believed that another spoilsman had reached the White House, and that another round of corruption, reminiscent of the Grant regime, was just around the corner.

In 1877 President-elect Hayes decided to use the Jay Commission findings on the New York customhouse to undermine the Conkling machine in the city and state, a machine that had failed Hayes in the election of 1876. Revenge, then, as well as deep commitment to civil service reform, formed the basis for the changes Hayes imposed on this and all large ports in the early years of his administration. Grant administration rules, Hayes vowed, would be implemented. The New York customhouse would become "a showcase for reform," and in that spirit, he removed Arthur in 1878.³¹ Edwin A. Merritt was named in his stead, and career civil servant Silas W. Burt became the naval officer.

It took months for both appointments to be confirmed, but the Conkling forces in the Senate were finally vanquished early in 1879. In the debate, Conkling scored heavily by demonstrating that, even as he mouthed civil service reform, President Hayes had forced Arthur to make two political appointments by his direct intervention. One was the son of the U.S. Supreme Court Justice who had cast the deciding vote for Hayes in the disputed election of 1876, and the other was the President's campaign biographer! E. L. Godkin, writing in *The Nation*, acknowledged "genuine pain" over these revelations, but added that Conkling's failure was a "great gain" for the reform movement.³²

President Hayes deliberately chose the New York customhouse as his battleground for civil service reform for both partisan and high-minded reasons, but he was correct in getting

³¹ Ari Hoogenboom, "Civil Service Reform and Public Morality," in H. Wayne Morgan, ed., *The Gilded Age* (Syracuse, N.Y.: 1970), pp. 92-93.

³² *The Nation*, vol. XXVIII, no. 710, February 6, 1879; and *New York Times*, February 4, 1879.

at the core of the problem: The facility was, he said, “a center of partisan political management,” while it “should be conducted on business principles.” Hayes wrote Edwin Merritt that he expected the new collector to implement the Grant rules “in making appointments and removals of subordinates.” Remain independent of “mere influence,” the President admonished. “Neither my recommendation, nor Secretary Sherman’s, nor that of any member of Congress, or other influential persons should be specially regarded.” These are interesting words coming from an executive who had blatantly foisted two political appointees on New York customs in the recent past. “Let no man be put out merely because he is Mr. Arthur’s friend, and no man put in merely because he is our friend.”³³

Some of Hayes’s actions gained significance over time. For example, his Executive Order of June 22, 1877 forbidding office holders to take part in political activities and disallowing political contributions by federal officers meant little in immediate terms.³⁴ It would be a long time before either was observed. Yet he also insisted on implementing the Grant rule on competitive examinations; the New York customhouse was made the guinea pig in 1879 when the rule was first enforced. Appointments from that date could be made only after a competitive examination was taken, with the three candidates who did best as the only ones eligible for the post in question. “Well-known citizens” were prominent on the board of examiners, ensuring the integrity of the system.³⁵ That success, and the overall sense that at last the deep and nagging problems of political morality were being

³³ Rutherford B. Hayes to Edwin A. Merritt, February 4, 1879, *Diary and Letters of Rutherford B. Hayes*, Williams, ed., vol. III, pp. 520–21; Hayes to the U.S. Senate, January 31, 1879, in *A Compilation of the Messages and Papers of the President*, James D. Richardson, ed., 11 vols. (Washington, D.C. 1897–1909), vol. VII, pp. 511–12.

³⁴ Rutherford Hayes’s Executive Order no. 626, June 22 (actually promulgated June 28), 1877, in *Messages and Papers of the President*, Richardson, ed., vol. VII, pp. 450–51.

³⁵ *The Nation*, vol. XXVIII, nos. 712 and 715, February 20 and March 13, 1879, respectively.

addressed, caused a favorable public response in Gotham, and probably the nation at large.

Naval Officer Silas Burt's dynamic honesty and leadership clearly enhanced the public's perception that a thorough housecleaning was under way. Burt implemented the rule requiring competitive exams for appointment by calling on prominent New York residents to administer the exams, astutely asking reform-minded journalists to take part. These editors, Burt later noted, "were specially interested and their impressions, always favorable, were reflected in their papers." The *New York Times*, for example, described Burt's efforts as "enlightened" and "an agreeable disappointment to the doubters." Never before, a contemporary *Mugwump* noted of the customhouse, "had so much time been given to proper work and so little to partisan politics." Politics was not eliminated by any means, in any of its forms, but it was curbed in this most symbolically important of Government agencies.³⁶

REFORM: PRESIDENT ARTHUR

Arthur's nomination as Republican Vice-Presidential candidate owed much to a series of improbable circumstances, including the fame he had achieved as a party regular victimized by the wave of reform. More immediately, his nomination was a sop to the Conkling machine in New York, which had opposed James A. Garfield's candidacy in 1880; Arthur's place on the ticket was a successful attempt to salvage the electoral votes of New York for the Republicans. He was elevated to the Presidency when James A. Garfield died in September 1881, the victim of assassination by Charles Guiteau.

The facts of Guiteau's purpose are somewhat cloudy, but the immediate and enduring *public* perception was very clear. Guiteau was a deranged office seeker who wanted Arthur to be

³⁶*New York Times*, July 9, 1879; and Hoogenboom, *Outlawing the Spoils*, pp. 172-73.

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President in order to restore the spoils system and avert civil service reform. To outraged people in general then, and to reformers in particular, the spoils system itself was the motivating force in the assassination, and the languishing cause of civil service reform was jolted into a new momentum that would carry it through to the Pendleton Civil Service Reform Act of 1883. Involved in all this was the perception held by Guiteau, and seemingly shared by the reformers, that Arthur was an old-line spoils politician who could be counted on to restore the old order. Those who so reckoned did so without taking into account the impact the office would have on the man.

This public perception of Arthur was well founded. It is ironic that his candidacy for Vice President was indirectly the result of his two well-publicized failures: the cut in his collector's salary in 1874 and his removal from the New York customs post three years later. The strong sense of his past limitations lingered on in 1881 and beyond. Henry Adams, that astute commentator on the politics of the Gilded Age, noted acidly, "Luckily, it will be hard for Arthur to begin worse than Garfield did, although he can but try."³⁷

The new President's critics were in for a surprise. A "new" Arthur emerged in the White House, an Arthur radically different from the one in the customhouse. In his first State of the Union message to Congress at the end of 1881, after three months in office, Arthur pledged himself to civil service reform. He committed himself to the principle of fitness for office, an end to wholesale removals, and above all a permanent revival of the Civil Service Commission. He had some qualms about competitive exams for office, lest college students dominate the civil lists, but he said he would even support a bill that contained an examination provision.³⁸ Exactly a year later, by the time he

³⁷ Henry Adams to Henry Cabot Lodge, October 29 and November 15, 21, 1881, *Letters of Henry Adams*, Worthington C. Ford, ed., 2 vols. (Boston: 1930), vol. I, pp. 330-32.

³⁸ Chester Alan Arthur's State of the Union Message to Congress, December 6, 1881, in *Messages and Papers of the President*, Richardson, ed., vol. VIII, pp. 60-63.

delivered his second annual message, Arthur had come all the way round. In his December 1882 address he called for enactment of the Pendleton Civil Service Act, endorsed competitive examinations without qualification, and supported a ban on political assessments of government employees.³⁹ Chet Arthur, as one historian has observed, “had traveled a long way” from the New York Customhouse.⁴⁰

Arthur delivered on his commitments. He signed the Pendleton Act and it became law in 1883. That he meant business in implementing it was indicated by his appointment of Dorman B. Eaton, secretary of the National Civil Service Reform League and the person who drafted the bill, as the commission’s first chairman. In his remaining time in office, President Arthur heard many complaints about his “indifference” to Republican party machines around the nation, but he pledged “to give the reform system fair play.” The new Civil Service Commission, at the time Arthur was leaving office, warmly toasted him for his “constant, firm, and friendly support” of its efforts.⁴¹ Initially, and probably inevitably, more was expected from the commission than it could at first deliver; but by the 1890’s its efforts had begun to pay off in a more professional civil service in general, and a revamped and increasingly professional Customs Service in particular.

REFORM: CUSTOMS AFTER THE PENDLETON ACT

For the two decades following its passage, the Pendleton Act offered up a classic case of legislation, akin to the “polka double-time:” two steps forward and one step backward. Defiance of the rule of law on the part of government officials and

³⁹ Ibid., vol. VIII, pp. 145–47.

⁴⁰ Hoogenboom, *Outlawing the Spoils*, p. 238.

⁴¹ Justus D. Doenecke, *The Presidencies of James A. Garfield and Chester A. Arthur* (Lawrence, Kans.: 1981), pp. 102–03.

political parties alike remained commonplace during the Gilded Age as far as customs was concerned, but at least victims now had somewhere to turn, and that somewhere was the Civil Service Commission. A key figure in promoting the transition from the weak, easily bypassed agency it was in the 1880's, to the increasingly effective watchdog it became after 1900, was Theodore Roosevelt, who began a six-year term on the commission in 1889. He brought the same legendary vigor to that position that he brought to everything else.

The Pendleton Act of 1883 strengthened the commission's oversight role. It also mandated the gradual classification of civil service positions so that vacancies would be filled by examinations. This meant that the number of jobs overseen by the commission would increase as incumbents vacated them. In theory, political involvement by civil servants was banned, and the practice of forcing political assessments on government employees rendered illegal. It would be many years before those provisions became the norm, however. Removals for political reasons were also prohibited, but again there was a gap between what the law said and the reality imposed by party politics.

Nonetheless, the law caused a dramatic and extensive turnaround in the linchpin of the Customs Service, the New York City customhouse. Problems in New York were not solved overnight, but the leadership combination of Edwin Merritt and Silas Burt after 1877 gave New York a much-needed headstart on professionalization and reform that continued after their terms and into the 1880's and 1890's. One measure of success was the diminution of complaints and criticism in the New York press and reform periodicals; another was the relative paucity of cases from New York brought before the Civil Service Commission. On taking office as a commissioner in 1889, Teddy Roosevelt by his own account "did some pretty good work" at the customhouse. As if to prove his assertion that "I did not intend to have the commission remain a mere board of head clerks," he recommended the removal of three subordinates in the examin-

er's office in New York, charging them with fraud.⁴² Examples were made of a few of the thousands of employees in New York, but the customhouse was on its way to a return to the professional reputation it had enjoyed before the Jackson era.

This is not to say that efforts to exploit the New York customhouse for political ends disappeared. What did happen was that there was now a place to lodge complaints, with some assurance that investigation and exposure, if not removal and criminal proceedings, would follow. Only one case surfaced in New York during Roosevelt's six-year tenure. Peter Rafferty and Thomas McGee "advised" fellow customhouse employees to "pay contributions to the Democratic campaign committee treasurer" during the 1888 Presidential race. Those who did not contribute received a reminder. Both men, according to Roosevelt, "were apparently endeavoring to keep just outside the pale of the law, but it looks very much as if they had overstepped the line." An indictment followed, but no conviction; nevertheless, the example seems to have worked, because this incident remained, for New York at least, an isolated one.⁴³

The spillover of politics into customs operations at the end of the 19th century seemed to be more in evidence outside New York. Much of the problem regarding politics and the civil service concerned the persistent confusion as to what exactly constituted political interference. The process of definition continued throughout the 19th century, as Customs struggled to achieve independence from political intervention.

San Francisco was a case in point. In 1889, an examiner in the customhouse was removed, he claimed, for political reasons. Roosevelt agreed with the complainant but pointed out the then-existing limitations imposed on the Civil Service Commis-

⁴²Theodore Roosevelt to Anna Roosevelt, June 2, 1889, *The Letters of Theodore Roosevelt*, Elting E. Morison, ed., 2 vols. (Cambridge, Mass.: 1951), vol. I, p. 163.

⁴³Theodore Roosevelt to William H. Miller, May 6, 1890; Roosevelt to Oliver T. Morton, May 5, 1892; and Roosevelt to Lucius B. Swift, May 7, 1892, *ibid.*, vol. I, pp. 218, 277, 280.

sion. "All we can do," Roosevelt wrote in 1889, "is to control appointments and see that they are made according to law." He could offer no redress. A few years later, Edward Jerome, the deputy collector at Oakland (operating under the jurisdiction of the San Francisco collection district) complained bitterly to his Congressman that his superior at San Francisco had removed Jerome's father on the grounds the elder Jerome was too old to do the work and that his retention on the payroll really constituted nepotism. Jerome the younger, pointing out what a sterling employee his father was, charged that the removal "was activated by a dislike of me." In 1896, another deputy collector at Oakland resigned to run for Congress. When he lost, he tried to reclaim his job on the ground that he was protected by civil service tenure; the ruling went against him, for in claiming civil service protection "he has grossly violated the civil service rules." ⁴⁴

Fugitive problems occurred elsewhere as well, even as the general picture improved for U.S. Customs. In 1896 special agents were sent to Key West, Florida, to investigate charges that political assessments had been "levied on custom house employees" for the previous two years. Political contributions had been solicited, the U.S. Attorney General acknowledged, but compliance was not enforced by threats. The collector was admonished and the matter dropped. Similar charges leveled at the New York collector were dismissed as unfounded.⁴⁵

More substantial allegations were made against the Baltimore collector over a period of years. A sign-up sheet for promising to

⁴⁴Theodore Roosevelt to J.G. Underwood, in *ibid.*, vol. I, p. 204; Edward B. Jerome to Charles Lyman, December 21, 1892, "Press Copies of Letters from Edward B. Jerome, 1881-1897," U.S. Bureau of Customs Papers, RG 36, Port of San Francisco General Records, 1869-1931, Federal Records Center, San Bruno, California; San Francisco *Examiner*, November 21, 1896; San Francisco *Chronicle*, November 10, 1896.

⁴⁵Judson Harmon to John G. Carlisle, July 28 and October 22, 1896, "Letters Received by the Attorney General, 1831-1910," RG 56, Treasury Department Records, Entry 144, Box 1897-1910, National Archives, Washington, D.C.

pay a political assessment "was carried around the custom house building in 1891," and "the person carrying it around was in the Government service." One customs employee, Sewell Plummer, refused to contribute and "warned the person presenting it that he was violating the law." The Civil Service Commission, with Roosevelt acting as its representative, decided instead to investigate the Baltimore Post Office, a much greater violator in the commission's eyes apparently. It was believed the resulting exposure would end the problem in the customs as well.⁴⁶ (By the 1890's, the Post Office seems to have replaced the Customs Service as the most politicized government agency.)

The Philadelphia customhouse became a long-term project for Theodore Roosevelt. In 1889, on taking office as a commissioner, Roosevelt journeyed to Philadelphia to conduct his own investigation. John Cadwalader, collector from 1885 to 1889, had virtually ignored the new Pendleton legislation. During his term, according to Roosevelt, "one hundred and twenty out of one hundred and fifty-two persons in the classified service of the Philadelphia Custom House were removed or resigned." Changes in the classified service (positions presumably protected by civil service tenure) "amounted to nearly eighty percent," Roosevelt alleged. "This is perilously near the clean sweep, of which there is always such danger when considerations of partisan politics are allowed to control the appointing officer." Roosevelt contrasted this situation with that in the Boston customhouse where, under the aegis of Collector Leverett Saltonstall, "an avowed upholder of the civil service law as well as an efficient business administrator of his office, only about a fifth of the classified employees were removed during the four years" from 1885 to 1889. The new commissioner concluded that "on the face of the matter there seems no good reason why in another office of the same character it should have been necessary to remove or obtain the resignation of four-fifths," and

⁴⁶Theodore Roosevelt to John Forrester Andrew, May 31, 1892, with enclosures, *Letters of Theodore Roosevelt*, Morison, ed., vol. I, pp. 283-85.

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so he decided to make a cleanup of Philadelphia his pet project.⁴⁷

By 1893, Roosevelt had made significant headway at Philadelphia. He reported in a speech at Harrisburg that, in the previous four years, removals in the classified jobs of the customhouse had dropped to 3.3 percent; in the unclassified customs jobs, however, removals remained at 90 percent over a four-year period—a level Roosevelt considered unconscionable. Removals cost time and dollars, Roosevelt argued, for it took six months for the typical clerk to become as proficient as his predecessor. “For four months preceding a change in administration,” Roosevelt added, the unclassified employee “did barely half his ordinary work, because he was nervous about his position.” Roosevelt called compellingly for rapid classification of the lesser customs positions.⁴⁸

In the ensuing years, classification was in fact extended at Philadelphia and other ports, yet problems of enforcement persisted in Philadelphia, even as conditions improved in Boston, New York, and elsewhere. Congressman Marriott Brosius as late as 1898 cautioned the Pennsylvania Civil Service Reform Association that although “intrigue and corruption” in the customhouse had been reduced, “the system” continued. The system involved “official favoritism, and political and social influence,” persistent impediments to enforcement of the Pendleton Act.⁴⁹

Despite the continued presence of political influence in the Customs Service, the 1890’s saw rapid professionalization, as

⁴⁷Theodore Roosevelt to the Civil Service Commission, December 21, 1889, in *ibid.*, vol. I, p. 206.

⁴⁸Theodore Roosevelt’s Speech before the Judiciary-General Committee, Pennsylvania House of Representatives, Harrisburg, Pennsylvania, March 7, 1893, National Civil Service Reform League Correspondence, 1893 folder, Welsh Collection, Historical Society of Pennsylvania, Philadelphia.

⁴⁹Congressman Marriott Brosius’s Speech, January 11, 1898, Papers of the Pennsylvania Civil Service Reform Association, Miscellaneous Box 1891–1919, Historical Society of Pennsylvania, Philadelphia. The association was one of several local citizen-oriented watchdog organizations, the existence of which was encouraged by the Civil Service Commission.

classification increased and stronger enforcement took hold. Most open corruption seemed to have been rooted out. At least by 1893, reports of corruption and political favoritism disappeared from the published Roosevelt papers. The papers reveal, however, that difficulties persisted in the Post Office Department to which Roosevelt addressed himself.

When Roosevelt resigned from the commission in 1895 to take the position of Police Commissioner of New York City—on a career course that would lead to the White House—he believed that progress had been made over his six-year tenure. “During my term in office,” he wrote President Grover Cleveland in his letter of resignation, “I have seen the classified service grow to more than double the size that it was six years ago. There have been haltings and shortcomings, here and there,” he added, “but as a whole the improvement in the administration of the [Pendleton] law has kept pace steadily with the growth of the classified service.” In a less formal valedictory he noted, “I have for six years given all my energy and all my heart to the work.”⁵⁰ He and those other early Civil Service commissioners had indeed done that, and one result was a more efficient and honest Customs Service as it entered the 20th century.

One important change that the new century would bring—at long last—was an end to the Customs responsibility for overseeing the immigration into the United States. That assignment had never been intended for the agency, but Customs had had to cope for more than a half-century. Short-handed and underfunded as it was, U.S. Customs did the best it could to enforce the poorly conceived Chinese Exclusion Act of 1882, which is discussed in the chapter that follows.

⁵⁰Theodore Roosevelt to Grover Cleveland, April 25, 1895, Roosevelt to Lucius Burrie Swift, April 27, 1895, *Letters of Theodore Roosevelt*, Morison, ed., vol. I, pp. 443 and 447, respectively.

Chapter VII

CUSTOMS AND IMMIGRATION: ENFORCING THE CHINESE EXCLUSION ACT, 1882-1926

Most historians examining the activities of the Customs Service overlook its responsibility for overseeing immigration into the United States in the 19th century. Before there was a clearly defined Immigration and Naturalization Service, the specialized immigration officers assigned to ports and border crossings were either part of the Customs Service or under its jurisdiction. In that era of massive arrivals, Customs—as usual without even remotely adequate resources—was never more challenged than it was in having to enforce the poorly drawn, hostile Chinese Exclusion Act of 1882 and its subsequent refining amendments.

This story can serve as an in-depth example of Customs' responsibilities in an age of immigration. Before and after the Civil War, Irish and Chinese immigrants were permitted to enter the United States in vast numbers to provide the cheap labor required to build the transcontinental railroads. The Irish arrived through northeastern ports to build westward; the Chinese arrived at various points on the West Coast to build eastward. With the transcontinentals largely completed by the 1880's, the Chinese were no longer wanted. They shared the fate that befell all non-Caucasians in 19th-century America, a victimization

that was perhaps deepened by their double jeopardy as immigrants (also unwanted by many).

The Customs Service was shoved into the breach to enforce the oppressive 1882 law and stop the flow of illegal Chinese immigrants, male and female, adults and children, who were smuggled through most West Coast ports including San Francisco and Seattle, as well as overland from western and eastern Canada and across the Mexican border. Given its limited personnel and resources and an impossible number of loopholes to deal with, Customs nevertheless did a creditable and, on the whole, humane job in enforcing a bad law.

STEMMING THE "YELLOW TIDE": THE FACE OF DISCRIMINATION

Perceptions of Chinese immigrants as inferior beings developed in California in the 1850's, as they flocked into the Bay area around San Francisco in the wake of the gold rush to begin work on the railroads. Because the Chinese coolies provided labor, little effort was made then to restrict the new arrivals from the Orient. Much has been written recently about American attitudes toward Asians; in general it need only be noted that the attitudes that surfaced before the Civil War would prevail well into the 20th century. By 1870, Chinese immigrants constituted about 10 percent of California's population and a much higher proportion of its labor force. Most of the Chinese laborers did menial work. The stereotype can be found in the popular contemporary poem by Bret Harte called "The Heathen Chinee." By the 1870's, "anticoolie clubs" had been established all over the Bay area, as political forces in both parties, strongly supported by organized labor, moved to restrict Chinese immigration.¹

¹For a good description of Chinese-American labor tensions, see Alexander Saxton, *The Indispensable Enemy: Labor and the Anti-Chinese Movement in California* (Berkeley, Calif.: 1971), especially pp. 4-10, 18-20, 68-78.

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San Francisco was the center of Chinese settlement and the center of racial prejudice as well by 1870. In that year the city passed a "Cubic Air" ordinance barring Chinese from crowding into small hovels—the only housing they could afford. In the same year the Chinese were prohibited "from using poles to carry laundry loads on the sidewalk." The most degrading local law was an 1873 statute requiring a Chinese under arrest to cut off his queue, a mortal disgrace to the individual. Anti-Chinese riots, looting, and even lynching were commonplace by that decade.²

It was little wonder then, that state and national political efforts to restrict Chinese immigration were very much in evidence by the 1870's, with western representatives in Congress in the vanguard seeking to put together an anti-Chinese bloc capable of passing an exclusion law.³ The effort succeeded in 1882, with the passage of the Chinese Exclusion Act, which closed off Chinese immigration and provided that "no State or Court of the United States shall admit Chinese to citizenship."

The act, according to one historian, indicated both the fevered hostility Americans felt toward Chinese and the weakness of China itself as a nation, for the law was intended to be, and was insulting. But loopholes crept into the legislation, as always happens.⁴ The U.S. Customs Service, that repository of dirty jobs to be done for the government, was given one of its dirtiest when it was asked to coordinate the enforcement of the Chinese Exclusion Act.

Customs slogged on with the principal responsibility for coordinating the enforcement of the Chinese Exclusion Act until after the turn of the century, when the new U.S. Public Health

²Him Mark Lai, Genny Lim, and Judy Yung, *Island: Poetry and History of Chinese Immigrants on Angel Island, 1910–1940* (San Francisco: 1980), p. 10.

³For an example of this effort, see *The Nation*, February 20, 1879, vol. XXVIII, no. 712, and *passim*.

⁴For an effective summary of anti-Asian attitudes and legislation in this era, see Jeff H. Lesser, "Always 'Outsiders': Asians, Naturalization, and the Supreme Court," *Amerasia*, vol. 12 (1985–1986), pp. 83–100, especially p. 85.

Service and the Bureau of Immigration took over. The former came into existence gradually between 1890 and 1910, as a variety of operations coalesced. In 1900, for example, a Public Health Service Quarantine Station was established on Angel Island to work with the Customs Service in screening incoming Orientals.⁵

The Bureau of Immigration had been established in 1864, but it was assigned only statistical responsibilities at first. Its role was strengthened in 1882 when the Chinese Exclusion Act was passed, but its operations in the field remained ambiguous; its immigration officers worked under the jurisdiction of the Customs Service until the 20th century, and Customs retained a diminishing role in the processing of immigrants at least until 1910. Customs remained a part of the process until the virtual termination of immigration in 1926.

Once the transcontinental railroad approached completion in 1882, Customs' main efforts were directed at curbing the influx of Chinese laborers, and this remained a priority goal for the next 10 years. No fewer than 30 circulars to personnel issued to the Customs Service over the period 1882-1902 dealt with Chinese exclusion; 25 of these defined restrictions on potential male immigrant laborers.⁶

In 1894, in an effort to pinch off the inflow of Chinese laborers, the government prevailed upon a hopelessly weak China to agree to a treaty that "absolutely" prohibited the migration of Chinese workers to this country for "a period of ten

⁵One of the developing specialties of the new U.S. Public Health Service was field epidemiological investigations, at a time when incoming Asians were suspected of being carriers of potential epidemic diseases. For this early work, and its new role in the immigration process generally, see A.T. Watt to J.J. Kinyoun, June 20, 1900, and passim, "Correspondence Received Regarding Epidemics and the Prevention of Epidemics, May 14, 1900," 2 vols., Box 29, RG 90, Papers of the Public Health Service Quarantine Station, Angel Island, California, San Bruno Federal Records Center, National Archives, San Bruno, California.

⁶For the texts of these customs circulars, see the comprehensive file available in the U.S. Customs Service Archives, Customs Building, Washington, D.C.

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years.” If Chinese workers who were already U.S. residents left the United States to visit their homeland, “the right of such a laborer to return” required “the deposit by him with the Collector of Customs for the district from which he departs a written description of his family, property, or debts. The Collector is required to furnish him with a certificate of his right to return.” This was an effort to close one gaping loophole in the 1882 law, by which immigration smugglers falsely claimed that incoming Chinese were, in fact, American citizens returning from visits abroad.⁷

STEMMING THE “YELLOW TIDE”: THE WEST COAST PORTS

By the mid-1890's, as immigration procedures at the ports generally tightened, the steamship companies, particularly the Pacific Mail Steamship Company, increasingly resorted to claims that incoming Chinese were returning from visits home. Many in truth could now say that they were native Americans. By mid-decade, a “Chinese Bureau” had been established at the Port of San Francisco, with the collector of customs at its head. “I am in my office daily,” Collector John P. Jackson wrote in 1898, “except Saturday afternoons, and devote the entire time from three until six in hearing and passing upon reports of the Chinese Bureau.”⁸

Partly because the Bureau was understaffed, its effectiveness was limited. Internal dissensions further eroded its operational

⁷Attorney General Judson Harmon to Treasury Secretary John G. Carlisle, May 26, 1896, “Letters Received from the Attorney General, 1831-1910,” Entry 144, Treasury Department Records, RG 56, National Archives.

⁸J. Jackson to Treasury Secretary Lyman Gage, August 8, 1898, Item 1, “Press Copies of Letters from the Collector to the Secretary of the Treasury, 1869-1912,” RG 36, General Records of the U.S. Bureau of Customs, Port of San Francisco, 1869-1931, San Bruno Federal Records Center, National Archives, San Bruno, California. This facility has a significant collection of federal documents relating to Chinese immigration through the Port of San Francisco.

ability. Confrontation was perhaps inevitable given the presence of a strong port officer directing independent special agents who in the past had worked with, not under, customs collectors. Appointments to the Chinese Bureau quickly became the main bone of contention, to the point that the Secretary of the Treasury was forced in 1896 to admonish the senior special agent not to "interfere in any manner with the prerogatives of the Collector" in matters governing appointments in the Chinese Bureau or anywhere else in the customhouse. Special Agent H.A. Moore replied to the Treasury Secretary that the appointment issued was critical to the operation of the Chinese Bureau, for Collector Jackson, not trusting the Asian interpreters, wanted to replace them with whites. Moore, for his part, considered white interpreters weak in language skills and refused to fire Chu Gang, his chief interpreter for some years, for whose integrity he vouched. The contretemps symbolized the internal impediments to the smooth operation of the Chinese Bureau.⁹

The work of the Chinese Bureau was also undermined by the amorality of venal steamship companies, notably the Pacific Mail Steamship Company. According to some historians Pacific Mail was "the clearing house for overseas prostitution"; it controlled American shipping in Hong Kong, which was also the center of Chinese emigration to the United States. All the shipping companies attempted to smuggle in as many illegal

⁹H.A. Moore to Treasury Secretary John G. Carlisle, November 13 and 27, 1896; and Assistant Secretary of the Treasury to Moore, November 21, 1896, Entry 19, "Cases Related to the Immigration of Chinese Women at San Francisco," RG 36, U.S. Customs Service Papers, U.S. Treasury Records, National Archives, Washington, D.C.

Normal patronage problems were always at hand. In 1901, for example, one of California's U.S. Senators wrote the customs collector reminding him that a Grand Army Post had endorsed the appointment to the Customs Service of a needy former colonel in the Union Army in the Civil War. The appointment was made. George Perkins to Mason S. Blackburn, February 5, 1901, Series 13, Box 3, (1901-1903), "Letters to the Collector from the Secretary of the Treasury Re Personnel, 1896-1918," RG 36, U.S. Bureau of Customs Records, Port of San Francisco Administrative Records 1857-1947, San Bruno Federal Records Center, National Archives, San Bruno, California.

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immigrants as possible, mainly women, because it was so lucrative. These steamship companies placed intolerable pressure on the customs collector. According to Collector Jackson in 1898, the companies “complained urgently and bitterly” at any delay in admitting their “passengers,” and pressed for quick decisions when that was impossible. The Customs Service, mindful that it might be consigning women to short, brutal lives of prostitution, held them until their documentation could be verified, preferring for the women the uncertainty of deportation to China to the certainty of a brief life as a sex slave. The companies wanted to land their human cargo quickly so that they could get their money from the smugglers and avoid Government room and board charges while their passengers were in detention.¹⁰

Young, unaccompanied women and girls were always suspect to customs officers, but men claiming to be returning home after visits abroad, or groups of arrivals claiming family relationships, were much harder to pin down and were thus detained. Ironically, the first detention shed was constructed on the dock of the Pacific Mail Steamship Company, an outfit whose reputation for colluding with immigrant smugglers was infamous. The *mu uk*, a “wooden house” in which detainees were incarcerated, was notoriously “unsafe and unsanitary”—a visible symbol of the degradation imposed on the Chinese by the 1882 law. The symbol survived until 1910, when the detention barracks were finally removed to Angel Island, where quarantine facilities for Asian immigrants had already been erected.¹¹

Several sources indicate that the shed held as many as 300 to 400 people in seriously crowded conditions. Chinese community

¹⁰ Customs Collector Jackson to Treasury Secretary Lyman Gage, August 8, 1898, Item 1, “Press Copies of Letters From the Collector to the Secretary of the Treasury, 1869–1912,” RG 36, U.S. Bureau of Customs Records, Port of San Francisco, 1869–1931, San Bruno Federal Records Center, National Archives, San Bruno, California; Sean O. Callaghan, *The Yellow Slave Trade* (London: 1968), p. 40; Marilyn Johnson, “Chinese Slave Prostitution in San Francisco, 1850–1930” (honors thesis, Stanford University, 1979), p. 16.

¹¹ Lai, Lim, and Yung, *Island*, p. 13.

leaders in San Francisco for years pleaded for more humane facilities on Angel Island, a position supported by the Customs Service for quite different reasons: By the late 1890's, customs officials "felt that the island location would prevent the Chinese immigrants from communicating with Chinese on the outside and would isolate immigrants with allegedly 'communicable' diseases." Transfer of detention facilities to Angel Island would, in the eyes of Customs, make detention "escape proof." But for nearly 15 years, the jerry-built *mu uk* on the Pacific Mail dock was the place where the incoming Chinese spent their first days, weeks or months.¹²

The major cause of detention was the loophole in the 1882 act that permitted U.S.-born Chinese to return to the United States, but denied them valid U.S. passports because they were Orientals. The United States claimed that it did not want to recognize the national passports of a hopelessly carved up and weak China, a recognition that would have permitted Chinese nationals to apply for visas to visit or trade. So it was that Chinese leaving the United States had to establish elaborate credentials with Customs before their departure, and those credentials took time to verify on return. Barring that, affidavits from two Americans, Oriental or white, could permit an immigrant to enter the United States, if no negative evidence turned up in interrogations—but this procedure also took time and produced detentions. So Customs found itself in a no-win situation: damned if it permitted rapid entry on perfunctory checks and damned if it detained Chinese arrivals for deep checks. The continuing scarcity of customs staff aggravated the dilemma.

In 1898 Pacific Mail and other companies stepped up their service of transporting Chinese to America, and they increas-

¹²Ibid. See also John P. Jackson to Lyman Gage, August 8, 1898, Item 1, "Press Copies of Letters from the Collector to the Secretary of the Treasury, 1869-1912," RG 36, U.S. Bureau of Customs Records, Port of San Francisco, 1869-1931, San Bruno Federal Records Center, National Archives, San Bruno, California.

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ingly relied on the claim that the arrivals were returning Americans. If delays in admission ensued, the companies threatened legal action for violation of the rights of American citizens. Detentions at this point peaked, and overcrowding remained the norm for the next five years on the Pacific Mail dock. The San Francisco customs collector claimed that the 1898 escalation of the lucrative ferrying of Chinese to America was "the beginning of an onslaught against the Chinese Exclusion Acts and the [Chinese] Treaty of 1894." That "onslaught" also had its victims. Mainly in the form of poems written on or carved into the walls of the later facilities on Angel Island, Chinese immigrants left a record of their anger and frustration.¹³

With a gentle breeze I arrived at the city
At ease, how was one to know he would live
in a wooden building?

Thousands, maybe tens of thousands, lived in a wooden building, hoping for clearance to enter the "Land of the Flowery Flag," as the immigrants referred to America. One detainee spoke of "tens of thousands" of poems on the walls. Another spoke more realistically of "over a hundred poems, all pining at delayed progress":

What can one sad person say to another?
Unfortunate travelers everywhere wish to commiserate.

The poems "are all cries of complaint and sadness":

The day I am rid of this prison and attain success,
I must remember that this chapter once existed.

Anger was a common theme:

Because of the records the innocent was imprisoned
in a wooden building . . .

My application has not yet been dismissed.

¹³For descriptions of overcrowding, see *ibid.* See also J. Hollywood to Mason S. Blackburn, February 21, 1901, Series 13, Box 3, (1901-1903), "Letters to the Collector From the Secretary of the Treasury Re Personnel, 1896-1918," RG 36, U.S. Bureau of Customs Records, Port of San Francisco Administrative Records, 1857-1947, San Bruno Federal Records Center, National Archives, San Bruno, California.

THE U.S. CUSTOMS SERVICE

As I record my situation, it really provokes
my anger. . . .

I am like a pigeon in a cage.

Still more angrily, another anonymous writer promised:

If the land of the Flowery Flag is occupied by
us in turn,

The wooden building will be left for the
angel's revenge.

and

Wait till the day I become successful and
fulfill my wish!

I will not speak of love when I level the
immigration station!

Angry or depressed, all understood what was coming. They would have to run the gauntlet of questions by the customs officers assigned to immigration duties:

Still I am at the beginning of the road.

I have yet to be interrogated.

My heart is nervous with anticipation.¹⁴

Perspective was everything; from the Chinese immigrant's point of view, the detention and interrogation process was brutal; to the customs officer it was a job that needed doing, often by persons who understood the pain they were inflicting. In an oral interview conducted many years later, one customs officer commented: "We just worked on the theory that this was the law and we had to carry it out. I felt each was entitled to a fair deal and I tried to give it to him as best I could. In a way it [the law discriminating against the Chinese] did touch me, and when the Exclusion Law was repealed, I thought that was a good thing."¹⁵

By 1897, the problem with male immigrants was more or less under control. If the person had no exit papers from the United States, as provided by the 1882 law, customs officers had to deal

¹⁴The poetry may be found in Lai, Lim, and Yung, *Island*, pp. 34, 36, 56, 62, 66, 92, 159.

¹⁵Oral interview, "Inspector #1," in *ibid.*, p. 110.

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with the usual two witnesses claiming the incoming person was a returning American. They tried to interrogate these “returning” men in such a way as to treat returning Chinese-Americans fairly while tripping up newcomers. In a not uncommon case, the San Francisco customs collector reported to the Secretary of the Treasury that Jew Sing Yuen, who claimed to be a returning merchant, was denied admission and deported despite the affidavits of two San Francisco attorneys, because interrogation belied his claim that he had lived in Chinatown:

“He is entirely ignorant regarding the location of the streets, etc., in Chinatown, where he claims to have been a resident merchant for eight years,” Customs Inspector John Wise wrote. It was not requisite that Yuen should be “a living street guide,” Wise noted. “Still, when a man claims to have lived on a certain street for eight years, he should certainly know whether or not there was a street car line on that street.” The two attorneys had to be wrong, Wise added, and Yuen would be detained until Treasury ruled on his case.¹⁶

The individual stakes, high as they were for men, were much higher for incoming women. Often, it seemed to customs and immigration officials and reformers alike, the lesser of two evils was deportation; the greater curse was for Customs to acquiesce passively in imposing on women a life of unwilling yellow slavery as prostitutes in the brothels of Chinatown.

THE PORT OF SAN FRANCISCO AND THE SLAVE TRADE IN CHINESE WOMEN

Virtually all the Chinese women who had come to the United States before the 1882 act cut off entry were wives and daughters

¹⁶ John Wise to Lyman Gage, April 16, 1897, Item 1, “Press Copies of Letters from the Collector to the Secretary of the Treasury, 1869–1912,” RG 36, U.S. Bureau of Customs, Port of San Francisco, General Records, 1869–1931, San Bruno Federal Records Center, National Archives, San Bruno, California.

of the Chinese merchant middle and upper classes in San Francisco's Chinatown. Because the dollar value of prostitutes was so high, smugglers of women and girls became increasingly inventive. "Returning" wives and daughters abounded, aided by a poorly drawn law that permitted two witnesses to attest to the truth of a re-entry claim. With pimps' lawyers present at the dock, customs agents were severely restricted in detaining women while claims were investigated or further documentation sought. Using the power of habeus corpus, these attorneys prevented prolonged detention that, as we have seen, was itself dehumanizing. Long before the witness claims and false papers could be exposed, the unsuspecting women and girls had disappeared into the bordellos of Chinatown.¹⁷

The groups involved in smuggling just one woman into San Francisco as a citizen or permanent resident might include a pimp, like Little Pete (the most visible procurer on the docks until his murder in 1897); a local white attorney; two "witnesses," paid \$30 each; and a coach to brief the woman on her story and the geography of San Francisco's Chinatown. Customs Collector John Wise, commenting on dealing with female arrivals, noted "if there are any prostitutes among them, they would generally be found among those who claim to be native born."¹⁸

According to several sources, a Chinese prostitute could be sold on the docks for an average of \$400 in the 1890's, but prices of \$2,800 and \$2,900 were not unknown, especially for women purchased as concubines for wealthy Chinese or rich whites. The whole sordid operation was, in fact, big business.¹⁹

¹⁷For a good overview, see Johnson, "Chinese Slave Prostitution in San Francisco," pp. 32-35, and *passim*.

¹⁸*Ibid.* See also Charles E. Holder, "Chinese Slavery in America," *North American Review*, vol. CXXXV (1897), p. 291. For Little Pete, see Richard H. Dillon, *The Hatchet Men*, 2d ed. (Sausalito, Calif.: 1972), chapter 12, titled "Little Pete: King of Chinatown."

¹⁹Johnson, "Chinese Slave Prostitution in San Francisco," pp. 17-18, and table following p. 28; George F. Paulsen, "The Yellow Peril at Nogales: The Ordeal of Collector William M. Hoey," *Arizona and the West*, vol. XIII (1971), p. 115; Herbert Asbury, *The Barbary Coast* (New York: 1957), p. 181; and Dillon, *The Hatchet Men*, p. 155.

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With profits like this at stake, special agents assigned to work under the supervision of the customs collector were hard-pressed to impede the traffic. But they tried, often pursuing belatedly discovered illegals into the brothels of Chinatown. A heretofore unused source indicates just how hard-working these customs agents were. Buried deep among miscellaneous customs documents in the National Archives is a notebook turned in by special customs agents working out of San Francisco in 1896-97. This notebook provides dramatic insight into the smuggling operation as a whole, the efforts of the Customs Service to impede it, and the role of religious and reform elements in the community to rescue enslaved women.²⁰ Incidentally, if this source reflects an ordinary period of activity, a much larger number of women entered this country in the 1880's and 1890's than census returns suggest.

The official census figures project that fewer than 1,500 Chinese women and girls landed "legally" in each of the last two decades of the 19th century.²¹ The notebook's figure of 107 female detainees during the six months from August 1896 to February 1897 works out to more than 2,000 women "legally" entering the country in the 1890's through San Francisco alone. If the number of women smuggled through other ports and across land borders is also taken into account (discussed later), as well as women *not* detained as they entered the Port of San Francisco, official legal entries clearly topped 3,500 for the "Mauve Decade."²²

The 107 detained in the six-month period were held on suspicion of being illegal immigrants. Customs agents identified the "witnesses" who swore to the legality of the women as "procurers" or "proprietors" of "houses of ill fame." Few if any

²⁰Entry 19, "Tabulated Index of the 107 Chinese Women Cases Landed at San Francisco from August 13, '96 to Feb. 20, '97," RG 36, U.S. Customs Service Records, National Archives, Washington, D.C.

²¹See note 19.

²²The term "Mauve Decade" as applied to the 1890's was coined by Thomas Beer, who used it as the title of his book, *The Mauve Decade* (New York: 1941). Mauve, as Beer explained it, is "pink trying to look purple."

of the entering women knew what was in store for them, so they learned their entry coaching lessons all too well, and were usually admitted and rarely deported. Threatened with lawsuits by Chinese entrepreneurs and their white attorneys and blitzed with paperwork at the docks, the undermanned cadre of special customs agents could seek to rescue individual women only when the opportunity arose. The 1882 law placed the burden of proof clearly on the Customs Service, so women usually could not be detained for more than two weeks, while Customs sought to uncover some evidence of their illegal entry.²³ But even as customs officers worked on recent entries, the influx of women continued.

The Pacific Mail Company's packet ship *Peru* was singled out as a "notorious yellow slave ship." In the six month period covered by the notebook, it alone landed 41 women; the *Rio* was right behind with 37. Five customs agents constituting the port's "Chinese Bureau" (Meredith, Boyce, Weller, Harrison, and Moore—the latter its supervisor) attempted to hold back the tide. The addresses the women gave as their residences were all well-known houses of prostitution (mostly on Washington, Jackson, and Dupont streets, and Ross Alley, all in Chinatown). So weak was the law and so ignorant of their destinations were these Chinese women, that even this knowledge in advance of entry on the part of customs officers could not legally bar admission of the women if they chose to enter the United States.²⁴

What the customs agents did was to ask their Chinese interpreters to inform the detained women of their impending fate and to give them information about the Presbyterian Mission of San Francisco, better known simply as the Rescue Home, located at 920 Sacramento Street in Chinatown. As the next section details, customs agents from the collector down

²³Entry 19, "Tabulated index of the 107 Chinese Women Cases Landed at San Francisco from August 13, '96 to Feb. 20, '97," RG 36, U.S. Customs Service Records, National Archives, Washington, D.C.

²⁴Ibid.

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worked closely with the mission to rescue the Chinese women from the fate intended for them. The numbers rescued each year could be counted in the tens; the numbers entering houses of prostitution in the hundreds. Still, rescue efforts never ceased, and sources clearly indicate that customs agents put their jobs on the line by helping in rescue operations both officially and on their own time.²⁵

FIGHTING THE SLAVE TRADE: CUSTOMS AND THE RESCUE HOME

The Presbyterian Mission went to any lengths, including kidnappings, to extricate enslaved women from the bordellos; and customs officers did what they could to help. The home's founder, Margaret Culbertson, dramatically expanded her efforts to rescue women when she hired Donaldina Cameron in 1895; the latter went far beyond the public relations campaign mounted earlier by Culbertson, invading the brothels themselves to bring out illegally held prostitutes.²⁶

Margaret Culbertson had been inveighing against the slave trade since the 1880's. "Women are bought and sold in Chinatown every day and we have not been able to prevent it," she wrote in 1896. "Cannot anyone suggest a plan to remedy the evil?" Her young assistant could. Not only did Donaldina Cameron invade the brothels or, barring that, intercept and kidnap young women as they were being taken from the docks to Chinatown, she also sought to arouse public indignation by writing about the subject in the newspapers.²⁷ Cameron also cultivated the support of the Customs Service.

As her influence in the city and her contacts in the Customs

²⁵ Ibid. See also Carol Green Wilson, *Chinatown Quest: The Life Adventures of Donaldina Cameron* (Palo Alto, Calif.: 1931) pp. 33, 42, 46-47, and passim.

²⁶ For a complete description of the work of the Rescue Home and the life of Donaldina Cameron, see *ibid.*

²⁷ Dillion, *The Hatchet Men*, p. 152; and Johnson, "Slave Prostitution in San Francisco," pp. 25, 38.

Service increased, Cameron was able to recommend sympathetic individuals for customs appointments. One customs inspector assigned as an interpreter to the Chinese Bureau recollected, "I [had] just [come] out of college. I knew Miss Cameron, who was respected by the [customs] people. Of course, she took a chance writing me a letter of introduction and vouching for me."

For years this appointee was able to warn Cameron of an arriving immigrant whose papers were suspect; illegal entry could perhaps be proven so that a rescue attempt could be made.²⁸ The red tape involved in proving illegality was incredible. The Treasury Department and the Attorney General ruled that suspicious papers had to be sent to Washington for testing and examination. By the time the test had substantiated the forgery allegations, the women had disappeared into Chinatown. Nevertheless, with foreknowledge of their destinations—if the women had not subsequently been moved—customs agents, police, and Donaldina Cameron herself would take part in rescue raids.²⁹

Special Agent H. A. Moore, who was the dock supervisor of the Chinese Bureau at the San Francisco customhouse, continually complained to both the collector and to Washington about the admission of women destined for forced prostitution. In one instance, when he protested vehemently the use of *habeus corpus* to admit three such women, the collector who preceded Jackson wryly observed that "on that subject [prostitution]," Moore "is considered to be the ablest expert on that line on the Pacific Coast." Not offered as a compliment, it nevertheless suggests Moore's relentlessness in attempting to halt the flow of enslaved women. Another agent, John Robinson, actually took part in raids on brothels to rescue women eventually found to have entered illegally. He was described as a "life-long friend of

²⁸Lai, Lim, and Yung, *Island*, p. 113.

²⁹Special Agent H.A. Moore to the Secretary of the Treasury, April 1, 1897, Entry 19, "Tabulated Index of the 107 Chinese Women Cases Landed at San Francisco from August 13, '96 to Feb. 20, '97," RG 36, U.S. Customs Service Records, National Archives, Washington, D.C.

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the Chinese, as well as of the work of the Sacramento Street” Rescue Home.³⁰

As their suspicions on illegal entry of women were officially verified, the special agents of the Chinese Bureau repeatedly fed their information to Donaldina Cameron, who raided the brothels when such expeditions held out any promise of success. Few of the rescued women ever arrived at customs for deportation, so the Service was obviously going beyond the law to try to both circumvent an immoral immigration act and help rescue at least a few of the doomed women. When a woman escaped to the Rescue Home and could provide names of others at the brothel held against their will, the customs officers would provide proof of the illegal entry of the latter. For example, customs special agents reported to Cameron, “The girl Chan Yoke is in house of ill-fame. So is Chan Choy. These came with the girl who escaped to the Rescue Home.” Customs agents would also pass on to Cameron the addresses for which women were destined; “816 DuPont St.,” a customs agent noted, is an “address that has answered for so many girls.” When a witness was suspect, that information would also be passed on: Chun Ying, a frequent witness, “is apparently interested in 4 girls this trip,” agents informed Cameron.³¹

John P. Jackson, the San Francisco customs collector at the turn of the century, was frequently an accomplice in the rescue efforts. Jackson had been a colonel in the Union Army during the Civil War and was clearly committed to stopping the enslavement of Chinese women. He often testified at trials,

³⁰ John H. Wise to Treasury Secretary Lyman Gage, May 7, 1897, item 1, “Press Copies of Letters From the Collector of Customs to the Secretary of the Treasury, 1869–1912,” RG 36, General Records of the U.S. Bureau of Customs, Port of San Francisco, 1869–1931, San Bruno Federal Records Center, National Archives, San Bruno, California; and Wilson, *Chinatown Quest*, pp. 52–53.

³¹ All of the above information is culled from Entry 19, “Tabulated Index of the 107 Chinese Women Cases Landed at San Francisco from August 13, ’96 to Feb. 20, ’97,” RG 36, U.S. Customs Service Records, National Archives, Washington, D.C.

attempting to gain the release of illegally landed prostitutes to Donaldina Cameron's care at the mission. After one of her raids on a brothel, she not only "liberated" a prostitute whose illegal entry could be proved, she also came away with an infant girl found at the brothel. Jackson told her to take the baby to the Rescue Home, assuring her that, officially, "the matter is forgotten." Cameron's biographer concluded: "How he [Jackson] untangled the official skein is a mystery; but that little "daughter" remained in the custody of the home to grow up with the other babies born there.³² Jackson and others eventually succeeded in getting the home approved by the federal government as a sanctuary where women who had illegally entered the country could be "detained" indefinitely, a euphemism to avoid having to deport them or to return them to the brothels from which they had been rescued.³³

STEMMING THE "YELLOW PERIL": THE LAND BORDERS

San Francisco was not the only point of entry for Chinese immigrants. The Mexican and Canadian borders also proved vulnerable to violations of the 1882 Chinese Exclusion Act. In some obvious ways, the former seems reminiscent of today's border problems. Current headlines such as "Mexico's Border Crisis: Illegal Aliens from the South" ³⁴ might have served as well in the 1890's. In another sense, however, the parallel falls short. A recent headline reads, "Business Joins the Border Patrol" in attempting to end illegal immigration through Mexico.³⁵ If business sometimes cooperates in attempting to head off illegal entry in the 1980's (although modern farming interests with their exploitation of "migrant" workers and clothing businesses with their sweatshops make it impossible to

³² Wilson, *Chinatown Quest*, p. 33, 42.

³³ Ibid., pp. 46-47.

³⁴ *Los Angeles Times*, October 20, 1986.

³⁵ *Business Week*, October 27, 1986, p. 41.

generalize about cooperation), that was never the case in the 1890's. As we have seen, "business" then was the sole source of illegal entry for women brought in to work in houses of prostitution.

The problems with the land border with Mexico can be illustrated by a look at the illegal entry process through the twin border towns of Sonora, Mexico, and Nogales, Arizona Territory. Smugglers of Chinese in the 1890's exploited the Sonoran Pacific Railroad, which ran from the Mexican port of Guaymas on the Gulf to Nogales, Arizona, where it joined lines to San Francisco. The route was far from foolproof. The Customs Service had extraordinary success in turning the traffic around; reputedly, attempts were made to smuggle in some 6,000 Chinese between 1882 and 1910, and half of these were caught and deported. Such was the value of those who gained illegal entry, particularly women, that the enterprise still proved profitable.³⁶ Many of those entering were Chinese laborers who sought entry to better their lives. At least one of these confirmed that overland routes were difficult. A poem found on the walls of Angel Island reads:

The road is far for the traveller; ten thousand *li*
is difficult.

May I advise you not to sneak across the border
The difficult and dangerous conditions are not worth
your inquiries.

These are not idle words.³⁷

Given the high profit for women sold into slavery and the gains from treating Chinese men like contract labor, smugglers continued to find the risk acceptable. The infamous ringleader in Sonora was Yung Ham, who followed an all-too-familiar procedure: Illegals were kept in small towns along the railroad,

³⁶The border smuggling of Chinese at Nogales, Arizona Territory, is described in George E. Paulsen, "The Yellow Peril at Nogales: The Ordeal of Collector William M. Hoey," in *Arizona and the West*, vol. XIII (1971), pp. 113-28.

³⁷Lai, Lim, and Yung, *Island*, p. 168. A *li* is about a third of a mile.

entered the United States in small groups and "were conducted across the line in some uninhabited area and turned over to an agent" on American soil; the American "agent" completed the process. William M. Hoey, appointed customs collector at Nogales, Arizona, in 1899, was both incorruptible and forceful in seeking to end the traffic. Framed by local Arizona business interests and corrupt customs agents, according to one historian, he was removed from office and tried in 1901. Although he was acquitted after a trial based on the flimsiest evidence, his reputation was ruined and he never got his customs job back.³⁸

The long, sparsely populated Canadian border was difficult to guard. Trouble spots stretched from Puget Sound, Washington, to Plattsburgh, New York. Port Townsend, Washington, in Puget Sound, was about 15 miles south of the Canadian border. According to a recent historian, "fewer than twenty" customs officers were usually stationed at the port, even though "only the San Francisco customhouse issued more Chinese labor certificates than the Port Townsend facility."³⁹

Virtually coincident with the passage of the 1882 Chinese Exclusion Act, the Canadian Pacific Railroad was completed, causing the release of about 9,000 Chinese workers. These workers, and newly arrived immigrants (mainly women), gathered in British Columbian towns awaiting a chance to enter the United States. The Canadian Pacific Steamship Company was responsible for large numbers of the new arrivals, knowingly selling Chinese passengers through tickets from China to Canada and on to the United States. The result was a major organized effort to smuggle Chinese across the border.

An 1891 incident illustrates how things worked. A San Francisco-owned schooner, the *Halcyon* (described at the time as a "notorious smuggling vessel"), was sighted in Puget Sound. The Port Townsend revenue cutter *Oliver Wolcott* (named after

³⁸Paulsen, "The Yellow Peril at Nogales," *Arizona and the West*, vol. XIII (1971), pp. 114, 116, and passim.

³⁹Roland L. DeLorme, "The United States Bureau of Customs and Smuggling on Puget Sound, 1851 to 1913," *Prologue*, vol. V (1973), p. 81.

the second Secretary of the Treasury) was dispatched to intercept, but this effort was ineffectual because the *Halcyon* stayed in Canadian waters; “local smugglers [of opium as well as people in this case] had rendezvoused in small boats before sailing for American ports.” Given the plethora of small inlets in Puget Sound on both sides of the border, it seems like a miracle, looking at a map, that anyone was ever caught.⁴⁰

By the late 1880’s, however, smugglers of Chinese considered western border crossings too risky. Instead, new arrivals were transported to Toronto or Montreal by an apparently acquiescent Canadian Pacific Railway; then they were moved southward to one of several eastern border crossings in New York or Vermont. For example, in 1899, the collector of customs in Pembina, North Dakota, asked the Treasury Department to notify ports of entry “convenient to Toronto” to watch out for Woo Deok. The latter had been turned away at Pembina because his papers were suspect; like many would-be entrants, Woo Deok claimed to be working for a Chinese laundry in New York City. The ruse apparently often worked, if ruse it was. The deputy customs collector at Plattsburgh, New York, reported only four arrests in that town in a 12-month period in 1898–99; one person was released, and three were deported.

If there was the least chance that a person was a legal entrant, that person was admitted. To do otherwise was to bring down on the heads of customs personnel a barrage of lawyers, writs, and witnesses.⁴¹ For example, a Scranton, Pennsylvania, law firm protested that Plattsburgh customs agents were illegally detaining Charlie Chee who, the firm contended, had been born in Scranton and had a valid passport obtained by the attorneys.

⁴⁰ Ibid, pp. 81–85. Pembina, North Dakota, was another favorite western crossing point during the 1880’s and early 1890’s. See N. E. Nelson to Treasury Secretary Lyman Gage, July 10, 1899, and John Martin to V. S. Woodward, June 30, 1899, Entry 1769, “Correspondence Re Chinese Immigrants or Deportees,” RG 36, U.S. Customs Service Records, National Archives, Washington, D.C.

⁴¹ Ibid. See particularly V. S. Woodward’s notes on John Martin’s June 30, 1899, letter.

"The government," Chee's lawyers noted, "ought to recognize their own passports." The incident demonstrates, among other things, that document forgeries were very good and that the proportion of valid re-entrants was high enough to force Customs to be very cautious in the matter of detention.⁴²

Chinese citizens and residents leaving the country went to great lengths to protect themselves. Rooney and Spence was a firm of "Customs Brokers" in New York City that specialized in handling people as well as goods. Its main business was handling the paperwork for exiting Chinese. For example, the firm wrote to the deputy collector at Malone, New York, notifying him that one of its Chinese clients was about to go to Canada; he was a "merchant of very high standing," the brokers added. "What papers would you require in order to secure his re-admission into this country?" the firm asked.⁴³

All detentions became matters of official attention. Special Customs Agent J. Thomas Scarf uncovered one scheme that was presented to a Vermont grand jury. It was alleged that would-be illegal immigrants were brought east on the Canadian Pacific to Montreal, then transported south, where they were hidden in a local Chinese laundry until their forged papers and witnesses could be lined up and they could be brought across. The jury refused to indict, leaving customs officials frustrated, as usual.⁴⁴

In summary, the more important point in all this is that the Customs Service, with an inadequate staff, was involved in

⁴²Ibid., Taylor and Lewis to Customs Collector at Plattsburgh, New York, June 13, 1889.

⁴³Ibid., Rooney and Spence to Deputy Customs Collector V. Gibson, April 21, 1899.

⁴⁴Grand Jury Report, March 6, 1897, Assistant Secretary of the Treasury to Collector of Customs at Plattsburgh, New York, April 26, 1897, and *passim*, Box 1897-1910, Entry 144, "Letters Received from the Attorney General, 1831-1910," RG 56, Treasury Department Records, National Archives, Washington, D.C.

See also Assistant Secretary of the Treasury to C.J. Smith, March 5, 1896; Attorney General Judson Harmon to Treasury Secretary John G. Carlisle, February 27, 1896; and Carlisle to Harmon, May 26, 1896, in *ibid.*, Box 1882-1896, for another example of the same kind of thing.

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enforcing an unfair and immoral law that was badly drawn to boot. Customs' caution in pursuing all but the most flagrant violations was necessary because it was ultimately responsible for protecting the long-standing and basic traditions of American civil liberties—perhaps its most important responsibility, when all is said and done. By 1910, the role of the Customs Service as the *de facto* American immigration agency had ended. A separate and coordinated immigration service had picked up the burden. Yet Customs' history as America's first immigration agency should not go unnoticed, for customs officials carried out their duties with compassion and deference to the highest traditions of American civil liberties.

Chapter VIII

CUSTOMS AND ALCOHOL

The Customs Service's responsibility for enforcing the Chinese Exclusion Act presaged a shift in enforcement priorities that was to define many of Customs' activities in the 20th century. Along with its traditional duty to protect the revenue, the agency was now being asked to protect the national character. Americans at the turn of the century were beginning to realize the extent of their country's growth and power. Giant industrial cities teemed with immigrant workers who neither dressed, nor spoke, nor worshiped the same way native Americans did. The nation had also acquired an empire, and a place among the nations of the world. Would—could—America retain its moral integrity in the face of these new conditions, populations, and partners?

These anxieties led many Americans into a campaign to protect their national purity. Fired by the Progressives' faith in the power of law to improve society, Congress passed laws to curb what it saw as the most immediate evils. Restricting immigration was just a first step. Prohibiting the distribution and consumption of alcohol, drugs, and pornography followed.

Because many of these items enter the United States from abroad, the Customs Service became the first line of defense. As always, the agency's responsibility outweighed its resources to do the job. It was told—not asked—to enforce morality, an unen-

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viable task at any time. Inevitably, from 1882 on, Customs became a social as well as a revenue agency.

This alliance of economics and morality has never been easy to maintain. Three major problems have plagued Customs' efforts:

1. The laws regarding these moral issues are very difficult to enforce. Much of the legislation has been poorly framed, and, because it affects personal behavior, it garners little public cooperation or support.

2. The ups and downs of the federal budget have meant inadequate funding for customs projects and personnel.

3. Congressionally mandated cooperation with other agencies has caused bureaucratic competition and confusion. These themes can be seen in the role of the Customs Service in the drama of national Prohibition.

DEMON RUM

National Prohibition was not an idea that sprang full-blown and fully articulated from the collective brain of the 65th Congress. Americans have always been a thirsty people, given to muttering about doing something to curb that thirst as they lift their elbows and drain their glasses. The colony of Georgia, established as an experiment in philanthropy and prison reform, was a dry colony by act of Parliament for the better part of its first decade.¹ By the end of the 18th century Dr. Benjamin Rush echoed the churches' demands for purity of one's soul by chronicling alcohol's detrimental effects on the purity of one's body.

The census takers who traveled the nation's highways and back roads in 1810 reported 14,000 distilleries of all sizes, which

¹Malcolm F. Willoughby, *Rum War at Sea* (Washington, D.C.: 1914), p. 3. For evidence of America's long love affair with hard drink, see William Rorabaugh, *The Alcoholic Republic: An American Tradition* (New York: 1979).

produced more than 25 million gallons a year—enough to provide every American man, woman, and child with more than three gallons of hard stuff beyond the usual beer, wine, and fizzy cider. With the spread of the factory system in the early days of the Republic, drink became an economic as well as a physical problem. Drunkenness led to absenteeism, and lost work days meant lost income for worker and master. For early 19th-century reformers, the horror of poverty lay behind their horror of drink. A perceived economic threat to the nation motivated the growing effort to legislate morality.

The drive to control alcohol had other roots as well. The German and Irish immigrants who swelled the population in the first half of the 19th century brought their taste for beer and whiskey with them. Drink was an important part of their culture. Prohibiting its use took an important symbol away from a visible and threatened minority. Although this xenophobic link was not explicitly articulated, it could be argued that Americans hoped to control these immigrant populations by controlling their alcohol consumption.²

By 1820, many Americans were urging abstinence instead of temperance. Those joining the American Society for the Promotion of Temperance pledged to refrain from all alcohol by placing a “T” next to their names and becoming “teetotalers.” As the American Temperance Union, this group lobbied for the legal prohibition of the sale and consumption of alcoholic beverages. In 1851, it persuaded the state of Maine to prohibit liquor sales, and a dozen other states quickly followed suit. Although temperance agitation increased public awareness of the evils of demon rum and helped cut consumption, temperance zeal soon faded. By 1861, enough Americans were drinking again to make a liquor tax an attractive way of financing the Civil War.

By the end of the century, the Prohibition Party, the Women’s Christian Temperance Union, and Carrie Nation’s Anti-Saloon

²The deeper meanings of Prohibition are compellingly discussed in Joseph R. Gusfield, *Symbolic Crusade: Status Politics and the American Temperance Movement*, 2d ed. (Urbana: 1986).

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League had begun the push for a constitutional prohibition amendment. Between 1913, when the amendment was first proposed, and 1919, when the states ratified it, league pressure on state and local ballots had already enacted prohibition for nearly three-quarters of the American people.

The passage of the 18th Amendment was a great victory for America's native middle class; it had managed to impose its standards on everyone else's behavior. Prohibition proved impossible to sustain, however. When Parliament banned liquor from Georgia in 1734, it learned that prohibition breeds illegal stills, bootleggers, and rum runners (all of which disappeared when alcohol became legal again in 1742). The federal government had to learn the same lesson. Within eight months of passage, agents found a still producing 130 gallons a day operating on the farm of a Texas prohibition crusader. Within a year, \$10 million worth of liquor, 800 cars, and 3,000 stills were seized; 10,000 persons were arrested in New York and New England alone.³ By the time the 18th Amendment was repealed in 1933, the noble experiment had become a joke, a law more honored in the breach than in the observance. That may have been all right for the general population, but it was terribly frustrating for the Customs Service; after all, whether the law was observed or not, the Service still had to enforce it.

ENFORCEMENT BEFORE THE NATIONAL PROHIBITION ACT

The U.S. Government has been watching the flow of alcoholic beverages within and through its borders since there has been a Treasury Department. The first customs port surveyors measured the quality and quantity of liquors being offloaded at their docks and determined the duties due on them. The surveyors registered this information on special certificates that

³ Allen S. Everest, *Rum Across the Border: The Prohibition Era in Northern New York* (Syracuse: 1978), p. 6.

listed not only the amount and proof, but also the ship's name, master, and port of origin. Merchant ships regularly plied the Atlantic, the Mediterranean, and the Caribbean to quench the thirst of their countrymen, bringing back bottles, barrels, and pipes (two hogshead casks) of French brandy, West Indian rum and geneva, Spanish red wine, madeira, port, and claret. In March 1816, for example, one J. Thorndike imported about 900 gallons of brandy from Marseilles in one shipload.⁴

As soon as there were laws, of course, there were ways to get around them. By the mid-19th century, alcohol smuggling had become a fairly regular topic of Treasury Department circulars to customs collectors. An April 1866 notice warned customs officers that "merchandise purporting to be Essence of Cayenne, Essence of Ginger, Tincture of Camphor, Tincture of Myrrh, etc., etc." had been found to be far richer in alcohol than essence. The Secretary of the Treasury urged "unusual vigilance" and authorized agents who were "entirely satisfied . . . that the real object of the Importer is to introduce the Alcohol at a lower rate of duty than is provided for in the law" to detain the spurious essences and extracts, alert the Department, and await further instructions.⁵ By the mid-1870's the department had been alerted to more open smuggling, and it warned the collectors to be on the lookout for "vessels and boats upon the lakes of the northern, northeastern, and northwestern frontiers of the United States, ostensibly engaged in fishing, [which] have been used to smuggle Canadian liquors." ⁶

Perhaps the most comprehensive enforcement job the Customs Service had in the late 19th century, however, was to take

⁴Brandy Import Certificates, 1816, Salem Custom House Records, Box 28, Essex Institute Historical Collection, Salem, Massachusetts. More information about liquor imports may be found in the folder "Surveyors' Certificates Liquors, 1794-1805," Box 49c, in the same collection.

⁵Treasury Department Circular to Collectors of Customs and Others, April 3, 1866. All references to Treasury circulars are from the archives of the U.S. Customs Service, Washington, D.C.

⁶Treasury Department Circular no. 109, Smuggling in Fishing Craft, August 11, 1875.

responsibility for section 14 of the act of May 17, 1884, titled "An Act providing a civil government for Alaska." Congress evidently feared trouble on the tundra, for this law prohibited breech-loading rifles and ammunition along with intoxicating liquors in that territory. Any ship leaving a U.S. port for Alaska with these items aboard was required to file a special manifest to prove to the collector that these were "necessary supplies and equipment of the vessel." Allowances were made, of course, for guns going to "white settlers or temporary visitors not traders," and for liquors "solely for sacramental, medicinal, mechanical, or scientific purposes."⁷

Going after smugglers in the fjords of the Alaskan coast already occupied most of the northern customs officers' time. The natives were master smugglers, and government agents soon realized that they could not pay them as much to inform on their colleagues as the smugglers could pay to keep them quiet. Such widespread abuse of the law did not surprise William Gouverneur Morris, the Treasury special agent who reported on the state of affairs on Sitka Island in 1879. "Let one sojourn for any length of time in that humid climate, and if his bones all the way up to his throat don't ache to distraction for a drink I am no judge of human nature."⁸ If a special agent felt this way, one can only guess at the thirst of the general population.

The Alaskans had devised another solution besides smuggling to ease that ache. They blended one gallon of molasses, five pounds of flour, one-half a box of yeast powder, and enough water to make a thin batter, which they then distilled into hoochenoo, or "hooch." Morris, who seemed to speak from experience, called this local drink "a vile, poisonous, life and soul destroying decoction, . . . which saps the very essence of

⁷Treasury Department Circular no. 53, Executive Order Concerning the Importation of Intoxicating Liquors and Breech-loading Rifles and Ammunition into the Territory of Alaska, May 4, 1887.

⁸William Gouverneur Morris, *Report Upon the Customs District, Public Service, and Resources of Alaska Territory* (Washington, D.C.: 1879), p. 59, Beinecke Library, Yale University, New Haven, Connecticut.

the human system, producing crime, disease, insanity, and death." His solution: prohibit the importation of molasses.⁹

The Alaskan restrictions represented obvious attempts to control a large and unfamiliar population suddenly placed under American aegis by withholding two of the white man's greatest gifts to native peoples—guns and alcohol. In asking Customs to enforce this "do as I say, not as I do" law, Congress turned its revenue agents into symbols of an arrogant and imperialistic national policy.

Liquor smuggling was a chronic condition along America's southern border as well. Customs had mounted its first land patrol along the Rio Grande in January 1886, but it did little more to suppress what it saw as a fairly minor problem.¹⁰ But minor problems have a way of growing. By March 1918, at the height of prohibition zeal, a Texas agent, Paul Bernhart, complained to Philip C. Hanna, an American Consul in Mexico, that citizens in his dry state were crossing into Mexico to get a drink and bringing one back for later. Bernhart asked for a beefed-up "Customs patrol along the boundary" to prevent smuggling. As evidence of need, he submitted the Laredo deputy collector's statement of frustration at having "only two persons . . . assigned to such duty . . . today," and added that American soldiers had been pressed into Customs' service in desperation.¹¹

During the 19th century, alcoholic beverages came to be reclassified both by the American public and by the Customs Service. In 1800, wine and whiskey were commodities to be taxed. In 1900, they were public enemies—destroyers of the nation's health and morals. In the intervening century, alcohol had developed into a symbol associated with foreign populations and economic menace. By controlling alcohol, Americans hoped

⁹Ibid., p. 58.

¹⁰Arthur C. Millspaugh, *Crime Control in the National Government* (Washington, D.C.: 1937), p. 68.

¹¹Paul Bernhart to Philip C. Hanna, March 25, 1918, Document 130, Decimal Files 811.114/49-220 (1910-1929), Department of State, RG 59, National Archives, Washington, D.C.

to control—and preserve—their world and their place in it. While protecting the revenue, Customs was also shielding an insecure nation from its fear that drink would make it weak. It was the maturation of this fear that led to the passage of the 18th Amendment.

THE NOBLE EXPERIMENT: CUSTOMS AND THE 18TH AMENDMENT

On January 1, 1920, the 18th Amendment took effect. From then on, there was to be no traffic in or consumption of alcoholic beverages within the United States, nor were any to be imported or exported. Prohibition was thus an international as well as a domestic affair, and that made it a job for the Customs Service.

The National Prohibition Act—called the Volstead Act—covered the licensing and control of the legal manufacture and distribution of alcoholic liquors and industrial alcohol. It actually had little effect on the nature of customs work, however. The service was already entrusted with curbing the smuggling of dutiable alcohol; the new law simply rendered all foreign liquor illegal. The Volstead Act meant that Customs, in addition to enforcing prohibition, had to continue to quash attempts to cheat the government, to collect fines and penalties, to help prepare criminal cases, and generally to preserve a respect for the nation's laws while it defended its revenues. The 3,000 agents overseeing every inch of the 18,700-mile border were having enough trouble already.

The very act of declaring wine and whiskey illegal seems to have given those drinks an irresistible glamour. Public demand swelled and always exceeded supply. Many enterprising and entrepreneurial souls undertook to redress that imbalance, with the unlooked-for result that Prohibition created a new and very healthy industry: rum-running.

Most of the alcohol smuggled into the United States came through middlemen. Liquor was exported from Britain or France

to Canada, the West Indies, or Mexico. From there it could be carried into the United States across its land, river, and lake borders. During the first four dry years, Canada's liquor imports increased six times, Mexico's eight, and the Caribbean Islands five. The federal government was modest in its reckoning of smuggled booze; in light of the rising alcoholic tide in the Nation, the \$20 million lost revenue estimated for 1922 seems naively low.¹²

Smugglers concentrated in certain key distribution points. The Canadian border offered many opportunities, especially around the Great Lakes. Smuggling became Detroit's second largest industry, employing more than 50,000 people and doing about \$215 million worth of business a year. The breweries and distilleries of southern Ontario produced a variety of beverages that were easily stashed in wharves and warehouses before being "exported" across the Detroit River. Much of Detroit's smuggling was also done by diversion. Goods shipped by rail from Albany to Detroit via Canada would be inspected and sealed by customs officers before export. Once in Canada, however, the railroad cars could be opened; their cargoes could then be switched from dry goods to wet, resealed with artful counterfeits of customs seals, and dispatched for an uninspected arrival in Detroit.¹³

Smugglers along the New York-Vermont border preferred cars, wagons, horses, and hand luggage for transporting their liquor. This region was especially hard for the Customs Service to patrol because of its unaccommodating terrain and harsh weather, not to mention the long expanse of Lake Champlain. Officers also faced a problem partly of their own making: they closed their understaffed stations at night.

Although customs agents could do little about nighttime caravans of crate-laden cars careening along the mountain roads,

¹²Sean Dennis Cashman, *Prohibition: The Lie of the Land* (New York: 1981), pp. 29-30.

¹³*Ibid.*, pp. 30-32.

they did become adept at noticing suspicious bulges, bags, and bodywork among their diurnal customers. Many men, they discovered, had real beer bellies. Women whose silhouettes were far from sylphlike were often forced to reveal bottles in their underwear. Automobiles with clanks and rattles and new upholstery also yielded contraband to the customs inspectors.

Although to today's eyes these smuggling stories seem quaint and attractively antiestablishment, it must be remembered that not all the alcohol smuggled in was for personal use or limited distribution. The promise of liquor profits drew big operators as well as small, sometimes with terrifying results. The Third Ward Political Club of Niagara Falls, New York, which counted several prominent mafiosi among its members, led a giant conspiracy to divert, redistill, and then export denatured alcohol that it acquired legally through a U.S. permit. Something went terribly wrong with the batch smuggled into Ontario in the early summer of 1926; it was 93 percent highly toxic wood alcohol, and 21 people died from drinking it. Theirs were not the only deaths. Among the other fatalities charged to the club was that of a U.S. customs agent at Niagara Falls, who, while starting his car one day, detonated a bomb that blew him to bits.¹⁴

The eastern seaboard received most of its liquor through the "rum rows" off the coast. Foreign vessels would load up with liquor in the West Indies and then sail north to anchor just outside the United States' three mile limit. Small, fast boats would dart out of bays and inlets to these mother ships, take on a few cases of liquor, and then run it ashore at some secluded, unpatrolled spot. While rum rows of various sizes paralleled several hundred miles of coastline, the earliest and perhaps most famous was the one off New Jersey. Certainly it was one of the

¹⁴The agent's name was Orville Preuster. See Ontario Provincial Police Memo, September 20, 1926, Criminal Investigation Department, Record Group 23, Series E-93, File 1.9, Archives of Ontario, Canada. The case also appears in *The United States vs. Joseph Sottile, et al.*, File 25-53-116, Department of Justice, Record Group 60, National Archives, Washington, D.C.

most brazen, for local land arrangements among “importers,” politicians, and the Coast Guard officers who stopped suspicious vessels for customs inspections guaranteed a lot of looking the other way. Small boats regularly unloaded their wares at public piers in Atlantic City; in fact, the “King of the Bootleggers” there, one Johnny Campbell, felt secure enough to arrange smuggling up and down the Jersey coast, and even to bring booze in coal ships directly to his headquarters in Philadelphia.¹⁵

A special Treasury agent stationed at Philadelphia described the basic method of rum-running in a report to the Department of State. Boats registered in the Philadelphia district (although some of them changed their home ports or flags once at sea) were used to carry liquor from the West Indies to Florida and the Atlantic coast. Usually these boats cleared in ballast from some southern port. In Nassau they loaded up with 1,000 to 1,500 cases of liquor. The comptroller of customs at Nassau could then clear the boat for Canada. The captain carried two manifests, and could show the appropriate one should he be hailed by an American cutter: If stopped en route to Rum Row, he would produce the one for Canadian alcohol; after discharging his cargo, he would show the one for ballast. Everything would seem to be in order.

The agent noted that the greatest advantage to using small boats to move the cargo ashore was that if they were stopped, they could always swear they were out fishing. Before long, however, Caribbean consulates were regularly alerting the State Department (and they, in turn, Customs) of any suspicious clearances from their ports.¹⁶

¹⁵Box 7378, Department of State General Records, Record Group 59, 811.114/BWI/9 (1910–1929); and Mark H. Haller, “Philadelphia Bootlegging and the Report of the Special August Grand Jury,” *Pennsylvania Magazine of History and Biography*, CVII, (April 1985), p. 220.

¹⁶Department of State General Records, Record Group 59, 811.114/BWI9, 319, 317, 324, National Archives, Washington, D.C. False clearances were a popular trick on the West Coast as well. A Seattle police lieutenant turned bootlegger smuggled liquor out of Canada on ships cleared for Mexico. See Kenneth M. Murchison, “Prohibition and the Fourth Amendment: A New Look at Some Old Cases,” *Journal of Criminal Law and Criminology*, vol. 73, no. 2 (1982), p. 485.

The New Jersey rum row flourished until it was defeated by the extension of Customs' jurisdiction from three to 12 miles. The extra distance gave the Coast Guard more time to seize the small boats and impatient mother ships who strayed too close to shore. But like a leaky pipe in a slapstick skit, just as soon as this hole was plugged, another sprang open. This time it was South Florida.

Florida was ill-prepared for the quantum leap in smuggling. The southernmost customs district was understaffed and under-equipped: the office at Palm Beach was a six- by eight-foot shack, and Miami officers had to hire and train civilians every winter to handle the seasonal tourist crunch. There was no customs speedboat until 1924, and no official automobile until 1926. In many places the only possible enforcement of Prohibition was the collection of the \$5 per bottle fine on liquor confiscated from unhappy tourists.¹⁷

With such critical weaknesses in both the law and the means of enforcement, Customs could do little beyond the ports. The occasional raids and speedboat chases more often led to the change of the smuggler's drop-off point than to his arrest. There were some officers who tried to do more. Agent Bill Harmon, a man of legendary cunning and stamina in customs lore, regularly visited the West Indies in mufti to photograph the rum boats tied up at the docks. When he found them in Florida waters, he seized them for failing to enter and clear.¹⁸

Because these were essentially the same boats moved to warmer waters, the *modus operandi* was the same in Florida as elsewhere. Double manifests worked for the more sophisticated operators, and a fine burst of speed for the smaller ones. As in any maturing industry, a multitude of competing individuals soon merged into several larger firms. An efficient corporate

¹⁷Much information on Florida operations has been compiled by retired Deputy Collector Arthur T. Brantley in an unpublished booklet, "Florida Customs," (Miami, January 30, 1965), photocopy in the archives of the U.S. Customs Service, Washington, D.C.

¹⁸Brantley, "Florida Customs," p. 18.

organization could then take care of suppliers, transport, pay-offs, and “insurance”; should an employee be caught, the bosses would supply bail and lawyers. They would also make sure there was no evidence. One of the most prominent Florida smugglers, Big Bill McCoy, invented something he called a burlock—a burlap-wrapped, triangular whiskey case holding three rows of one, two, and three bottles, which was guaranteed to sink so far if jettisoned that it could never be dredged up for court.¹⁹

Prohibition enforcement was more pedestrian in the larger ports. Customs’ major tasks there were making sure that the wine in the ships’ stores remained corked until the vessel cleared the 12-mile limit, and checking that no crewmen augmented that supply. Very often they did, and sometimes this caused trouble. When New York customs officers, acting on Treasury Department orders, put “all the wine on board of foreign steamers now lying in New York . . . under seal,” the Italian Embassy complained to the Department of State. Never mind that they were anchored in American waters. Italian crews were entitled by contract to a daily wine ration. The French were soon complaining as well.²⁰

Most ship searches proceeded without incident and yielded modest caches. A search of the S.S. *Oneida* on August 13, 1925, rewarded Boston customs people with eight bottles of unmanifested liquor; since the total value came to only \$4.50, the collector asked permission to ignore the matter. In November 1926, Boston officers going through the Dutch ship S.S. *Verndyk* discovered “seven bottles . . . concealed in the coal bunkers, . . . twelve bottles of unmanifested gin were found concealed under a bottom drawer in the ship’s hospital, and ten bottles of unmanifested brandy were found concealed under the boilers in the fireroom.” The fines on this haul totaled \$21 plus the seized liquor. Because the captain swore that the offending

¹⁹Cashman, *Prohibition*, p. 34.

²⁰Documents 204, 207, Decimal File 811.114/49-220 (1910-1929), Department of State General Records, Record Group 59, National Archives, Washington, D.C.

bottles were the individual ventures of crew members, customs did not impound the ship.²¹

Customs officers diligently searched ships on the West Coast too. On April 7, 1920, the *San Francisco Chronicle* reported, perhaps in jest, a tale of how Customs was enforcing the new law. Having searched a ship called the *Curacao* for illegal liquor, officers prepared to clear its entry into the United States. Part of this ship's cargo consisted of 230 parrots and 50 monkeys, all in cages in the hold. The captain, reported the *Chronicle*, had taken a liking to one parrot, whom he named Jimmy and taught to speak. Jimmy watched the customs officers prepare to certify the manifest and suddenly began to squawk: "Let's hide it in the cages, in the cages, in the cages!" Interested, the inspectors pulled aside a few cages, removed the birds, and found that each cage had a false bottom. Officers collected 374 bottles from the ship that day. As the manacled skipper was led away, Jimmy "poked his head out through the little wooden bars and yelled: 'Get your tooth pulled!' " ²²

Jimmy was not a typical customs informant. Most citizens, like Frank M. Reynolds, chief of police at Nantasket Beach, Massachusetts, wanted payment for their trouble. Reynolds, for example, wanted federal compensation for five gallons of liquor he found in a car.²³

Because customs enforcement extended to the transportation of illegal alcohol as well as its importation and concealment, the service frequently seized cars, trucks, and boats in the line of duty. The same day the *Verndyk* met its fate, Boston inspectors impounded a truck from Benjamin Merrihew, who had been

²¹ Collector W.W. Lufkin to Secretary of the Treasury Andrew Mellon, September 4, 1925, and November 9, 1926, "Customs, Immigration and Navigation Fines and Letters" vols. 23 and 25, Bureau of Customs Papers, Record Group 36, Federal Records Center, Waltham, Massachusetts.

²² *San Francisco Chronicle*, April 7, 1920.

²³ Collector W.W. Lufkin to Frank M. Reynolds, October 10, 1925, "Letters re Customs, Immigration and Navigation Fines, 1925," Bureau of Customs Records, Record Group 36, National Archives, Waltham, Massachusetts.

caught smuggling liquor off the docks. Depending on the needs of the particular customhouse, these vehicles were either pressed into service on the side of the law or sold, the profits in many cases going into the coffers of the Prohibition Bureau. This was the case with the \$525.10 the Boston customhouse realized from the sale of Giuseppe Pinzo's motorboat *New Boston*.²⁴

The Customs Service's responsibility under the National Prohibition Act was to stop at the border any alcohol imported without a permit or payment of proper duties. Customs was also charged with finding and seizing smuggled liquor. In other words, the agency was asked to do what it had always done, and in 1920 there was no reason to suppose it would not succeed. But no one had foreseen the American public's sudden craving for forbidden drink, nor the cheerful enthusiasm with which it embraced lawbreaking as a means of getting it. Very quickly, customs officers understood that in this case they were spitting into the wind.

WHAT WENT WRONG

Keeping America dry would have been a hard enough task for Customs to handle by itself. It simply did not have enough manpower to protect every inch of the border. The federal government exacerbated this situation, however, by mandating certain administrative alliances and artificially creating jurisdictional territories among the several agencies charged with enforcing the Volstead Act. Thus actions that were intended to strengthen enforcement efforts actually weakened them.

There was already a great deal of overlap in alcohol enforcement by the time national Prohibition went into effect. Each state, county, town, or hamlet could set its own rules about drinking within its limits; local laws thus represented local values

²⁴Ibid., Collector Lufkin to the Secretary of the Treasury Andrew Mellon, November 9, 1926; and Collector Lufkin to Clerk of U.S. District Court, Boston, August 12 and 27, 1925.

and practices. The 18th Amendment passed the buck to the federal government, overriding local option and establishing a uniform standard across the country. In so doing it forced the government to add to its traditional responsibilities for regulation and taxation the jobs of detection, investigation, and apprehension of what had arbitrarily been defined as a criminal activity: importing and consuming alcohol.²⁵

The National Prohibition Act provided legal ways to import undrinkable alcohol. Permits from the State Prohibition Director were filed with the customs collector, who then released the alcohol from bond and charged the proper duties according to the Tariff of 1922. Restricted imports all followed this pattern. The act made no overt change in the way Customs did its job; the service was still the agency to stop and seize illegal imports for the Treasury and other branches of the government. The law tacitly restricted the Customs Service's authority, however, by naming the Commissioner of Internal Revenue to head all enforcement activity for the import and domestic alcohol trade. Congress reinforced this perceived diminution of respect by cutting Customs' appropriations while increasing Prohibition outlays.²⁶ Not that the Prohibition Unit of the IRS got all that much: Its 1920 allotment was just over \$2 million and, for the rest of its run, its income averaged just over \$8 million. Outside estimates of the true cost of enforcing prohibition ran from \$15 million a year for New York State alone to more than \$2 billion a year for the Nation.²⁷

Underfunding meant low salaries. Prohibition Unit employees earned barely more than what the Bureau of Labor figured was necessary to support a family of five; by 1930, the best of them were bringing home \$2,300 a year. Still, they were doing better than the 3,000 customs officers who were vainly trying to be everywhere at once. The best of these were making \$1,680

²⁵ Millspaugh, *Crime Control*, pp. 22-23, 31, 54-56.

²⁶ Laurence F. Schmeckebier, *The Customs Service: Its History, Activities, and Organization* (Baltimore: 1924), pp. 76-77. See also Millspaugh, *Crime Control*, p. 70.

²⁷ Cashman, *Prohibition*, p. 46.

(and buying their own uniforms) in 1920, and only \$2,100 in 1930. It is understandable, then, that an officer might consider a request to ignore a truckload of clanking bottles, especially if the request were sweetened with cash.²⁸

The Prohibition Unit's personnel policy also stymied enforcement efforts. In December 1923, President Coolidge recommended that the prohibition field force be classified as civil service employees. This was in line with an established practice of extending civil service guidelines to all new federal organizations. Congress ignored custom in this case, however, and allowed many politicians to fill prohibition payrolls and fuel their machines at the same time. "Three quarters of the twenty five hundred dry agents," estimated one critic in 1927, "are ward-heelers and sycophants named by politicians. And the politicians, whether professionally wet or professionally dry, want prohibition because they regard prohibition as they regard post-masterships—a reservoir of jobs for henchmen and of favors for friends." ²⁹ Officers who had to stop to consider the political implication of any arrest they made certainly did not do much for equal enforcement of the law.

Compounding these financial and political restraints were jurisdictional ones. None of the enforcing agencies seemed to be really sure who was in charge. Coast guardsmen could make seizures on the high seas, but once the contraband was in port it was under the rule of the Customs Service, and both services wanted the credit. The Justice Department also could claim the glory, for it prosecuted the cases Customs and the Coast Guard presented to it. Federal and local authorities squabbled as well. Boston Collector Lufkin complained to Treasury Secretary Andrew Mellon in March 1923 about a U.S. District Court decision involving the provenance of seized liquor. The court had ruled that the state police could keep and dispose of it because they

²⁸ Ibid., pp. 46–47.

²⁹ Chester P. Mills, "Dry Rot," *Collier's*, vol. 80 (September 17, 1927), pp. 46–56, quoted in Laurence F. Schmeckebier, *The Bureau of Prohibition: Its History, Activities, and Organization* (Washington, D.C.: 1929), p. 51.

had impounded it. Lufkin thought Customs should claim the contraband, because it was the direct enforcing agent and could present a federal case. Such arguments over jurisdiction—when both state and national laws are violated, which take precedence?—were confused, Lufkin pointed out, by the nature of the contraband. No one, he noted wryly, would dispute either agency's claim to smuggled wool.³⁰

In an attempt to create order and efficiency out of chaos, a Bureau of Prohibition was created in March 1927.³¹ The same act established a separate Bureau of Customs with a commissioner appointed by the Secretary of the Treasury. The reorganization clarified Customs' role in prohibition efforts by laying out the division of labor. The Coast Guard was to ply the seas and make it difficult for rumrunners who had cleared foreign ports to deliver their wares. Regular customs officials, well experienced with smugglers, were charged with anticipating and intercepting illegal shipments of liquor. They, in turn, handed this information and evidence over to the special customs agents, who prepared the "well-made and hole-proof cases" which would send the smugglers to jail.³² The new Prohibition Bureau took a back seat now. Its agents supported Coast Guard and customs work by providing clerks, gathering information about smuggling and commercial bootlegging, and handling those cases the special agents deemed too far from the border to be legitimately within Customs' jurisdiction.

Besides providing a hierarchy of action, the reorganization was to improve interagency cooperation. Rather than supporting maverick agents who would handle all aspects of a case by

³⁰ Collector Lufkin to Secretary of the Treasury Andrew Mellon, March 20, 1923, "Letters re Customs, Immigration and Navigation Fines, 1923," Bureau of Customs Records, Record Group 36, Federal Records Center, Waltham, Massachusetts.

³¹ This was the fourth attempt to organize the administration of the act efficiently. The efforts of 1921, 1925, and 1926 had proved unworkable; the 1927 plan was to be revamped again in 1930. The saga of the Prohibition Bureau is laid out in Charles Merz, *The Dry Decade* (Seattle: 1930).

³² Schmeckebier, *Prohibition*, p. 33.

themselves, the government encouraged collaboration. The Coast Guard officer who stopped the spirited schooner was to notify the nearest customs station immediately. Customs was to have its agent and a U.S. attorney on hand when the ship docked, both to receive the contraband and to search for evidence. The system was to leave no room for "jealousy or rivalry." "There will be credit enough" for all concerned "if they succeed in breaking up the organized smuggling rings." ³³

Straightening things out on paper did not make the Customs job any easier. In just one year, guards at Ogdensburg, New York, seized 500 cars and stopped 34 railroad cars, each carrying 200 barrels of liquor, and still scarcely made a dent in the bootlegging traffic. El Paso Collector Adrian Pool described his territory as a 155-mile battlefield, every mile of which had at least "100 good ambushes for smugglers to hide and wait to kill our patrolmen." Groups of 10 to 15 liquor-bearing Mexicans crossed the Rio Grande near Cordova Island and El Paso, primarily because a large Mexican population there offered them shelter and anonymity. They also came armed with far more machine guns, shotguns, and rifles than had the two or four customs patrols guarding that strip of border.³⁴

Hostile terrain was not the only factor at work against the customs officers in El Paso. They covered the 869-mile Texas border with only 50 men and 25 cars. Most of those cars had been impounded by the government under the provisions of the National Prohibition Act and released for enforcement duty. The trouble was that these were cars the bootleggers wanted to get rid of. According to Collector Pool, bootleggers bought the good cars the Immigration Service auctioned off and ran them into the ground. At that point, "they put a can of alcohol in them, which costs about 50 cents a gallon, and see to it that the car is placed somewhere so that

³³ *Ibid.*, p. 30.

³⁴ U.S. Treasury Department, Bureau of Customs, "Proceedings of the Collectors of Customs Held in Washington, D.C., January 23-24, and 26, 1934," unpublished transcription in the archives of the U.S. Customs Service, Washington, D.C., pp. 18, 65-66, and *passim*.

a Customs Patrolman has to seize it, the bootlegger knowing that the Customs Officers cannot get any other cars than those they seize and will have to use this obsolete catch that they have abandoned." The Providence, Rhode Island, collector also had car trouble. His car "travels on the road just as a dog runs—sideways—the rear end entirely out of line with the front end, and liable to be ditched at any moment." ³⁵

The government offered little relief for the Customs' manpower and equipment shortages. Although appropriations to the Prohibition Bureau increased almost every year (the amounts went from \$2,200,000 in 1920 to \$12,401,620 in 1929), the increases did not keep pace with the geometrical increase in violations of the law. Prohibition agents seized about 6 million gallons of liquor during their first full year of operations; that figure increased to over 30 million gallons in 1929.³⁶ Congress simply would not release the funds to provide enough help for an overstretched Bureau of Customs, even denying the bureau the vehicles that could at least be trusted to chase the bootleggers.

Customs was not the only part of the department to feel the pinch. The Coast Guard was particularly burdened. Although the Coast Guard had gained its independence from the Customs Service in 1915, it found that concentration on antismuggling duty took too much time from its safety and lifesaving missions. Its boats had to cruise and patrol for smugglers both offshore and in the coastal waters that the few customs boats could not cover.³⁷ Unable to keep up with the work, the Coast Guard requested more men and boats from the Secretary of the Treasury, graduated classes from its brand new academy early, and encouraged one year enlistments to fill crews. For all this effort, however, the public blamed the Coast Guard for failing to do more.³⁸

³⁵ Ibid., pp. 65, 45.

³⁶ Merz, *The Dry Decade*, pp. 329–31.

³⁷ Darrell Hevenor Smith and Fred Wilbur Powell, *The Coast Guard: Its History, Activities and Organization* (Washington, D.C.: 1929), p. 52.

³⁸ For an overview of Coast Guard participation in Prohibition, see Howard V.L. Bloomfield, *The Compact History of the United States Coast Guard* (New York: 1961), especially pp. 146–47. The Coast Guard Records at

Enforcement was also frustrated by federal agencies outside the Prohibition Bureau's umbrella. The State Department was another actor in this comedy, for it negotiated reciprocal nonimportation treaties with nations that saw little to be gained, and much money to be lost, in helping Americans enforce their laws.³⁹ The 1924 treaty with Great Britain (whose postwar economy was bolstered by profits from the underground American liquor market) stipulated that the United States could search and seize suspected British rumrunners at a "reasonable distance" from shore; Britain, meanwhile, was assured of the sanctity of the three mile limit and received renewed permission to carry sealed alcoholic stores on passenger ships for use beyond that point.⁴⁰

Phrases like "reasonable distance" soon raised a crop of problems. While U.S. officials were authorized to board vessels only within U.S. jurisdiction, the Treasury Department told its customs officers that they could seize boats beyond that limit when there was evidence of communication with the shore, or if the ship suddenly put out to sea as if to escape detection. Occasionally, the United States was accused of exceeding its territorial limit. In 1928 Britain protested that U.S. cutters were anchoring in Bahamian waters without notifying proper authorities.⁴¹

Customs agents relied not only on foreign cooperation, but on the cooperation of American diplomats as well. Consuls in ports involved in this new triangle trade among the West Indies, Canada, and the United States were supposed to notify the State Department

the National Archives are another rich source of information on interagency coordination.

³⁹Many countries reaped huge profits from liquor smuggling and applied them to public projects. See Lawrence Spinelli, "Dry Diplomacy: The United States, Great Britain and Prohibition," Ph.D. dissertation, New York University, 1982, p. 6; and Cashman, *Prohibition*, p. 33.

⁴⁰For summaries of the various treaties, see Robert L. Jones, *The Eighteenth Amendment and Our Foreign Relations* (New York: 1933), p. 231 and passim. A 1922 regulation had prohibited the transportation of all liquor, whether under seal or not.

⁴¹Jones, *Eighteenth Amendment*, p. 54. For a full discussion of the difficulties with Great Britain over smuggling from the British West Indies, see Spinelli, "Dry Diplomacy."

whenever a suspicious cargo cleared local customs. The State Department then alerted Customs and the Coast Guard. For example, the American Consul at Georgetown, British Guiana, wired the State Department on April 17, 1926, that the "Schooner *Arthur J. Balfour* cleared for St. Pierre Miquelon April 15th with 11,713 gallons rum, 94 gallons gin." Presumably United States cutters could intercept that cargo before it made an unauthorized stop off the East Coast of the United States.

This system had its drawbacks. Treasury Secretary Mellon suggested that this information be sent in code, or at least in a "locked and numbered pouch," for the mails and telegraph could easily be compromised by smugglers much the way many motorists listen to police reports on their citizen band radios today. Communication between harbor and consul was not always smooth either. Foreign customs officers often failed to report pertinent clearances through oversight, indifference, "intervening holidays and the fact that they sometimes telephoned to the Consul and found his office closed at the end of the day."⁴²

Centralization of authority, a clear division of labor, international treaties—nothing worked. Customs still fought a losing battle. In October 1930, the Prohibition Bureau estimated that Americans had consumed more than seven gallons of alcohol per capita that year, 876,320,718 gallons in all. More than five hundred million of those gallons had been smuggled into the country.⁴³

THE END OF THE EXPERIMENT

Despite the rising quantity of alcohol seized and destroyed, despite the rising number of bootleggers and bureau men killed

⁴²Box 7379, Documents 616, 564; Box 7380, Document 982, Department of State General Records, Record Group 59, 811.114/BWI (1910-1929), National Archives, Washington, D.C. These State Department files, vast and well organized, should prove of great value to researchers pursuing the mechanics of the liquor traffic in the West Indies, as well as in other parts of the world. It's all there: tonnage, crews, clearances, and consular telegrams.

⁴³Cashman, *Prohibition*, p. 212.

or wounded, despite the rising number of speakeasies and smugglers, Prohibition endured through the 1920's. President Hoover upheld it vigorously; during his term, six new prisons were built to house nearly double the number of prohibition offenders than there had been before he took office.⁴⁴ Hoover also appointed a Committee on Law Enforcement and Observance in May 1929. Under the chairmanship of George W. Wickersham, the committee was asked to consider how best to enforce the 18th Amendment. Its report succinctly identified the real problem with the law. Prohibition marked the first time that federal police power had been used to control individual habits and behavior. "It was an experiment, the extent and difficulty of which was probably not appreciated. The government was without organization for or experience in the enforcement of a law of this character." ⁴⁵

In the end the experiment was abandoned. The 22nd Amendment erased the years of inadequate enforcement and widespread civil disobedience. Alcohol ceased to be an issue, a crusade, and returned to being a commodity that could be taxed and regulated in proven ways. Not that smuggling stopped with repeal. Although national Prohibition ended, many states remained dry, and Customs had to make sure that no liquor went to them. And, as the collector from Duluth pointed out, "just as long as good foreign liquor smuggled into the United States is so much better than the rectified spirits made in this country, and cheaper than imported liquor with such a high rate of duty and Internal Revenue tax, we will have this problem of bootlegging and smuggling to deal with." ⁴⁶

Prohibition was about a lot more than booze. It was about

⁴⁴ Ibid.

⁴⁵ National Commission on Law Observance and Enforcement, *Report on the Enforcement of the Prohibition Laws of the United States* (Washington D.C.: 1931), p. 20.

⁴⁶ U.S. Treasury Department, Bureau of Customs, "Proceedings of the Collectors of Customs Held in Washington, D.C., January 23-24, 1934," unpublished transcript in the Archives of the U.S. Customs Service, Washington D.C., p. 26.

the difficulty of enforcing a moral code for a diverse and hostile population. It was also about making foreign policy out of foreign trade; it was about governmental autonomy and cooperation; and it was about the need for writing good, clear laws and then providing strong support for their enforcement. Customs, unfortunately, learned the object lessons of Prohibition the hard way. In carrying out its mission to protect the revenue, it found itself protecting a largely unwilling nation from demon rum with only a blunt sword and a broken-down horse. Impossible legislation and inadequate support from Congress and other departments locked customs officials into a losing fight.

The war on alcohol ended in a truce. But 20th-century America is waging other wars now, other crusades for high moral standards. Calls for action against pornography and drugs are cast in the same tone as that used against Prohibition. And as before, Customs is being asked to protect our borders and our citizens from two commodities that are symbols of destruction.

Chapter IX

CUSTOMS AND THE WAR ON DRUGS

Say “customs officer” to almost anyone on the street in the 1980’s and you’re likely to get one of two responses. The first is a description of the deadpan officer at the airport who watches weary travelers claim their baggage after an international flight and then, like some ancient god, dispassionately and arbitrarily chooses who shall pass and who shall open his or her suitcase. The second is the image of the tanned and windblown agent cruising the South Florida waters in a speedboat, sunglassed eyes searching for fishing boats returning from a day’s work with nary a minnow aboard.

The popular perception of the Customs Service as a sort of national police force, ever on the lookout for transgressors against our revenue and moral codes, is a fairly accurate one. Its work in the Prohibition and pornography crusades shows that. Its commitment to the war on drug abuse, the *bête noire* of the late 20th century, continues that tradition. In so doing, Customs remains part of America’s fears, hopes, and confusions about who we are and what kind of nation we want to be. It also enters the long-standing debate over the proper limits of government’s role and power in shaping national life. The story of Customs and drug interdiction and thus echoes recurring themes and variations in its own and the nation’s history.

THE U.S. CUSTOMS SERVICE

FROM PURITY TO PROHIBITION: DRUG CONTROL IN THE 19TH CENTURY

Drug abuse is not a new problem; drug addiction, in fact, was an accepted part of 19th-century life. No eyebrows were raised when William Blair published *An Opium Eater in America* in 1825, for opiates were widely available in nostrums and patent medicines. With the perfection of the hypodermic needle in 1856, morphine became the nation's most popular analgesic; Victorian Americans who whispered about the "army disease" meant the morphia addiction of soldiers who had been treated in Civil War hospitals. Nor was addiction strictly a male prerogative. Approximately 60 percent of addicts by the turn of the century were middle-class women who relied on unlabeled medicinal compounds to ease the physical and mental aches and pains of their lives. And through these women and their dispensing of opiated syrups, thousands of babies and children became drug-dependent, too.¹ All in all, some scholars have reckoned that at least three percent of the general population was addicted to morphine by 1900, and that drug addiction on the whole was more widespread in the latter half of the 19th century than it is today.²

For all its prevalence, addiction was perceived not as a problem but as a reasonable and respectable result of a particular physiological complaint. Drugs, therefore, were not considered immoral substances to be kept out of citizens' reach, but commodities to be regulated and taxed. Those that were imported—primarily opium and cocaine—came under the proper purview of the federal government.

Customs officers were first authorized to enforce a federal drug law in 1848. Less than two weeks after Congress passed "An Act to prevent the importation of adulterated and spurious drugs and medicines" on June 26 of that year, Treasury Secretary

¹ Jerald W. Cloyd, *Drugs and Information Control: The Role of Men and Manipulation in the Control of Drug Trafficking* (Westport, Conn.: 1982), p. 22.

² Troy Duster, *The Legislation of Morality: Law, Drugs, and Moral Judgement* (New York: 1970), pp. 7-8.

The War on Drugs

Robert Walker was instructing the "Collectors and other officers of the Customs" to inspect all imported medicines to make sure that the name of the manufacturer and the country of origin were clearly displayed on each parcel. They also had to test the drugs' conformity to the strength and purity standards established by "United States, Edinburgh, London, French, and German pharmacopoeia and dispensaries." Those that did not conform were destroyed. Collectors at New York, Boston, Philadelphia, Baltimore, Charleston, and New Orleans could hire special examiners or "analytical chemists," at salaries ranging from \$1,000 to \$1,600 a year, to take care of drugs at their ports. Ideally, this examiner would come from the existing ranks of customs personnel, for the budget-minded Secretary also decreed that any new appointment be balanced by a staff reduction. Ports not specifically mentioned in the circular were to be served by "some reasonable person" the collector deemed knowledgeable enough to do the testing. Thus William B. Pike, the collector at Salem, Massachusetts, could engage local apothecary G. H. Pinkham to test the drugs and medicines arriving there, as well as to examine, value, and clear such exotic stuffs as gum myrrh and senna leaves.³

If white, middle-class Americans had been the only ones taking drugs, it is unlikely that drug regulation would have moved beyond weights and measures. But middle-class Americans were not alone in seeking relief through chemicals; ever more visible immigrants and minorities were using them, too. The same fears and suspicions that led to the crusade against alcohol inevitably led some Americans to reconsider their attitudes about drugs too.

Opium slipped into the United States with the Chinese who mined the gold fields of California. Collectors did not at first

³Treasury Department Circular, July 8, 1848, Archives of the U.S. Customs Service, Washington, D.C.; G.H. Pinkham to William B. Pike, February 27 and March 14, 1861, 1861 File, Salem Custom House Papers, Essex Institute Historical Collections, Salem, Massachusetts; *Salem Directory, 1866* . . . *A Business Directory*, (Salem, Mass.: 1866), p. 133.

know how to classify or charge duty on opium. An 1858 Treasury Department circular informed collectors that an opium preparation imported from China and "used exclusively for smoking by the Chinese population of California" was not a drug as defined by the 1848 act and therefore "must be regarded as an ordinary article of commerce . . . liable, as such, to duty at the rate of 15 per cent."⁴ This view changed as the Chinese population rose and white Californians began to complain about these odd people who wore strange clothes, spoke an unintelligible language, ate peculiar food, and lived together in bachelor ghettos where they indulged in recreations most Americans considered neither wholesome nor family-centered: Gambling, prostitutes, and drugs were the common escapes for these lonely laborers.

The opium dens, with smoky rooms where one could for little money buy a pipeful of the drug that could help one forget the pain of the real world for hours, became sensational symbols of the presumed decadence of this minority. For the Americans who viewed the Chinese as competitors for jobs, the "yellow peril" was a fearsome tangle of economic and racial confusions that was most easily expressed as a fear of drugs. Antinarcotics legislation was thus a way of controlling a threat to the social order. Opium the commodity became opium the vice.

The first steps to combat opium were local. San Francisco passed a penal antidrug law in 1875; Virginia City, Nevada, followed in 1876; and the trend continued eastward. Those states that controlled drugs soon found that just as much dope was smuggled in from nonregulated states as had been present before. Besides calling on their neighbors for help, they began pressuring the federal government to do something about opium.⁵

While not forbidding it altogether, Washington began to keep

⁴Treasury Department Circular, April 24, 1858, Decisions Under Tariff of 1857 from July 1, 1857, to July 1, 1858, Archives of the U.S. Customs Service, Washington, D.C.

⁵Cloyd, *Drugs and Information Control*, pp. 34-35.

a tighter watch on opium imports.⁶ After 1881 only American citizens could bring it into the country at all. In a treaty with China dated October 5, 1881, the United States and China agreed to stop all opium traffic. Chinese subjects could not import opium into any American port, and Americans could no longer import into, transport between, or even buy or sell opium in any of China's open ports, something they had done, legally or not, since the early days of the China trade. In his directions to customs officers about the enforcement of this treaty, Treasury Secretary Charles J. Folger urged collectors and other employees to "take pains to bring . . . to the attention of Chinese subjects who have heretofore been in the habit of importing the article into the United States" that any opium they bring in "will be seized and forfeited," and that they will be liable to a \$5,000 fine, a two-year jail term, or both.⁷

The treaty did not stop Americans from importing smoking opium into their home ports, or even from manufacturing it there, and customs officers of the late 1880's kept busy checking the packages of drugs for the proper duty stamps. But even allowing this limited trade did not stop smuggling. In 1885, collectors were instructed to brush the revenue stamps "with diluted sulphuric acid, so as to prevent their being reused for either increasing the value of opium of American manufacture or protecting smuggled opium." The Treasury Department discontinued the stamps briefly in 1889 when it realized that they "afford little or no protection to the interests of the Revenue, but furnish opportunity to smugglers and others to defraud said Revenue," but the Department reinstated them the next year.⁸

⁶Treasury Department Circular 25, February 15, 1876, *Illegal Importation of Opium*, Archives of the U.S. Customs Service, Washington, D.C.

⁷Arnold H. Taylor, *American Diplomacy and the Narcotics Traffic, 1900-1939* (Durham, N.C.: 1969), p. 10; Treasury Department Circular 42, April 10, 1882, *Opium Importations by Chinese Subjects*, Archives of the U.S. Customs Service, Washington, D.C.

⁸Treasury Department Circular 139, September 19, 1885, *Decisions in Customs Cases*; 19, February 25, 1889, *Opium Stamps*; 110, October 29, 1890, *Stamping of Imported Prepared Smoking Opium*; 156, October 15, 1894, Archives of the U.S. Customs Service, Washington, D.C.

Although lawmakers claimed to be saving the general public from the scourge of drugs, the trade laws were really an attempt to save the public from the pollution of other peoples. Restricting Chinese immigration had taken care of demographic threats to the nation. Restricting access to a substance that was an essential part of Chinese culture let that alien population know in no uncertain terms who was in charge here. The parallels between this policy and the temperance crusade to separate the Irish from their whiskey, or even the Army's measures to stop the Apaches from brewing their sacramental beer, are obvious.

Whatever their psychological benefit, the laws made little dent in the drug traffic. Despite restrictive measures, opium consumption rose from 12 to more than 52 grams per person per year between 1840 and 1900.⁹ Some smugglers responded to this increased demand by calling on the help of fellow conspirators. In one such scheme, Kwong Fong Tai and Company, Chinese merchants in San Francisco, imported between \$200,000 and \$400,000 worth of opium every 60 days with the help of intermediaries. Kwong Fong Tai's supplier, Rozario & Company of Macao, consigned the shipments to the Bank of British Columbia; one of the bank's clerks, H.R. Davidson, then entered the opium at the San Francisco customhouse. Once Kwong Fong Tai had paid Rozario through friendly customs brokers, Davidson withdrew the opium from the government warehouse, stored it in a private one, and awaited the merchant's instructions for its distribution.¹⁰

Some efforts were more straightforward. Customs Inspector P.H. Barrett lost his job in San Francisco because drugs kept disappearing off the dock. H.L. Foss, chief clerk of the Oceanic Steamship Company, found it relatively easy to open the pack-

⁹Wendy Melillo, "Early Skirmishes in the War on Drugs," *Washington Post*, November 4, 1986.

¹⁰Correspondence re Opium Seizure at Port of San Francisco, by Special Agents H.A. Moore, Leslie Cullom, and Caleb W. West, March 26, 1897, "Customs Bureau Special Agents Reports and Correspondence ca. 1865-1915," Box 14, Numbers 1435/76, Record Group 36, Customs, National Archives, Washington D.C.

ages on the dock, remove the opium, reseal the boxes, and take the contraband away by the simple expedient of getting Inspector Barrett blind drunk first.¹¹ Still other, more alert customs agents searching ships tied up at dock found contraband in tins of dry paint or tobacco, under floors, in furniture—even stashed in the boots or on the persons of passengers and crew.¹²

The Pacific Coast was certainly not the only entry point for opium. Canada was a haven for smugglers in the 1890's. Drugs and Chinese laborers were both sneaked over the Vermont line regularly.¹³ The collector at Pembina, North Dakota, was frequently tipped off about "certain Chinese persons" who were about to try to enter the United States. He also often warned the directors of North Dakota's subports to be on the lookout for opium coming in from British Columbia, perhaps packed and labeled as "St. Jacob's Oil," perhaps stowed in the gear of "parties traveling with dogs and guns, apparently hunters."¹⁴

Opium smuggling by the Chinese remained a customs preoc-

¹¹The case of the intemperate inspector may be found in the "Letters to the Collector from the Secretary of the Treasury, Re: Personnel, 1891-1916," Port of San Francisco Administrative Records, 1857-1947, Record Group 36, U.S. Bureau of Customs, National Archives Federal Records Center, San Bruno, California. See in particular the following documents in Box 1, Series 13 (1896-1898): Acting Treasury Secretary to San Francisco Collector John Wise, June 28, 1895; Special Agent A.H. Moore to Wise, May 20, 1895; Affidavits sworn by Charles W. Ohlsen, William Daley, and A.C. Van Pelt, May 13, 1895.

¹²Table Showing Seizures of Smoking Opium and Other Narcotics by Officers of the United States Customs Service at the Port of San Francisco, 1901-1931, Box 1, Series 9, Item 9, Records Relating to the Movement and Control of Imports, Exports, and Other Cargo, U.S. Bureau of Customs, Port of San Francisco, Record Group 36, Customs, National Archives Federal Records Center, San Bruno, California.

¹³William T. Bissell to Secretary of the Treasury John G. Carlisle, October 18, 1894, box 2: 1892-1894, 1894-1897, "Letters Received from the Post Office Department, 1820-1901," Entry 150, Record Group 56, Treasury Department, National Archives, Washington, D.C.

¹⁴Robert Morrison to Charles R. Lyman, October 7, 1891; R. Edwards to Deputy Collector of Customs, St. John, North Dakota, June 13, 1890; N.E. Nelson to Charles R. Lyman, September 12, 1892; Robert Morrison to Charles R. Lyman, December 22, 1891; N.E. Nelson to Charles R. Lyman, September 9, 1892, Archives of the U.S. Customs Service, Pembina, North Dakota, District Office.

cupation well into the 20th century. In January 1911, customs surveyors and inspectors at the Port of New York raided two tea-importing companies on Manhattan's West Side. One of these establishments was a heavily guarded confectionary shop whose occupants did not surrender themselves or their dope without a fight. The other, and larger, firm openly sold much more than lapsang souchong to its well-dressed white customers. Customs agents were able to enter the shop unnoticed, gather their evidence, and make their arrests without raising a ruckus. This place turned out to be the headquarters of a large syndicate run by an "Americanized" Chinese calling himself Charlie Boston. Boston, who was captured by U.S. marshals a week after the raid, kept extensive files of his importing business, including a healthy mailing list and several letters of thanks for gifts received from police chiefs around the Nation. A New York police officer noted sadly that Boston was proof that the time had come "when we could no longer safely leave them [immigrant Chinese] to themselves, assured that they would keep to themselves." ¹⁵

By linking opium use with a new and mistrusted population, the public gave drug use a social component and pushed the Government from revenue collection to moral protection. Instead of being something to regulate, opium became something to eradicate. But this first battle showed Washington that the war on drugs would not be easily won. Every legal action was met with a greater illegal reaction. Unable to stop the growth of opium use, the government clamped down harder. The McKinley Tariff of 1890 slapped a tax on all opium manufactured domestically and asked the Internal Revenue Service to collect it. The tariff also asked Customs to collect the revived import taxes on opium and morphine, thereby starting a turf war between the two agencies. When taxation did not solve the problem, Congress tried all-out prohibition, banning the importation of all

¹⁵ Customs Men Raid Two Opium Shops," *New York Times*, January 26, 1911; "Hold Chinaman As Head of Opium Ring," *New York Times*, January 31, 1911.

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opium and its derivatives (save for medicinal purposes) in February 1909.¹⁶

CHANGING TIMES: ENFORCEMENT IN THE PROGRESSIVE ERA

Opium may have been the first drug to prompt federal reaction, but it certainly was not the only one. Cocaine and marijuana also have been linked with highly visible subpopulations and branded public enemies.

Cocaine first came on the American market in 1885, and it was very popular by the turn of the century. Physicians who were alarmed at the growing ranks of morphine addicts among their patients and colleagues at first promoted cocaine as a cure for that problem, then prescribed it as a palliative for sinus headaches, hay fever, and almost everything else from toothache to chronic depression. Cocaine was an instant hit among the middle class because the energy and vitality it gave the user increased productivity on the job. Its use sanctioned by no less an authority than Sigmund Freud (an addict himself), who declared that strong-willed individuals could benefit from it. Cocaine also found its way into untold households in soft-drink bottles. Coca-Cola was indeed the real thing during the Gay Nineties, as were its rivals Kos-Kola, Koca-Nola, Cafe-Cola Compound, Celery Cola, Dr. Don's Cola, Vani-Kola Compound Syrup, Rococola, and Wiseola.¹⁷

Popular beverages and patent medicines made cocaine easily available to nonwhites as well. Blacks too poor to buy medical care often used these products as pain-killers. Although statistics show that addiction among blacks was less than among any

¹⁶Virginia Doherty Hill, *The History of the United States Customs Service as the Parent of Other Federal Agencies* (Germantown, Md.: 1985), p. 93, Archives of the U.S. Customs Service, Washington, D.C.

¹⁷When the federal government legislated cocaine out of these beverages, their manufacturers started putting in caffeine instead. See Melillo, "Early Skirmishes in the War on Drugs," *Washington Post*, November 4, 1986 and Cloyd, *Drugs and Information Control*, pp. 25-26.

other ethnic group, the blacks' low economic status left their even occasional cocaine use vulnerable to negative moral interpretations, especially in a South already trying desperately to preserve and protect itself with Jim Crow laws. This mythical image justified increased vigilance in Dixie; police and newspapers helped spread fear of the destructive powers of blacks and cocaine in many Yankee cities as well.¹⁸

Applause turned to apprehension for marijuana, too. Unlike opium and cocaine, which were shared by many segments of society, marijuana was at first the almost exclusive province of Mexicans and Mexican-Americans in the Southwest. Whites from Louisiana to California blamed marijuana for the vagrancy and immorality they saw in their dark-skinned, Spanish-speaking neighbors. Despite some medical claims that marijuana was the new wonder drug that would ease the pain of withdrawal from other narcotics, it remained firmly linked to lower class Hispanic minorities and was therefore something to be controlled.¹⁹

The Americans who cheered William Jennings Bryan looked around and saw colonies of Chinese laborers stretched out by their pipes in shadowy, smoky, opium dens; saw Mexican laborers carrying cigarettes made from a weed not grown in North Carolina filling Western towns and ranches; saw blacks drinking Coca-Cola on shanty porches throughout the South. And they were scared. The typical drug user was no longer the nice lady next door but the stranger in their midst, particularly, it seemed, the poor young male stranger who lusted angrily after the power and position of his betters.²⁰

While experts published lengthy articles alerting the nation to

¹⁸ Cloyd, *Drugs and Information Control*, pp. 31, 35-37; David F. Musto, *The American Disease: Origins of Narcotic Control* (New Haven: 1973), p. 7. Nor were blacks the only villains. An anonymous expert writing in the *New York Times*, for example, pointed out that black field hands got their coke from "every Jew peddler in the South." See "The Growing Menace of the Use of Cocaine," *New York Times*, August 2, 1908.

¹⁹ Cloyd, *Drugs and Information Control*, pp. 29, 37-40.

²⁰ Ibid., p. 31; Duster, *The Legislation of Morality*, p. 11.

the narcotic menace, the change in attitude was best expressed by a character called "The Dope Fiend" who first appeared in the pages of the *New York Sun* in 1896. Turned into a brutish beast by drugs that sapped his moral strength, the Dope Fiend gave a face to larger, ill-defined social tensions, and quickly became a convenient symbol. Thanks to him, all drug users became dope addicts. Drug use became drug abuse. By the time the guns of August boomed across Belgium, the American public was demanding action. A California schoolteacher asked Secretary of State William J. Bryan to stop the drug traffic because "at all times there are in our County jails, almost one hundred young boys of High School age hopeless wrecks from the use of drugs." That same year a New York lawyer representing Mrs. William K. Vanderbilt sent President Wilson resolutions from prominent judges and hospitals with the ominous warning that "The Evil has come to be a National Menace."²¹

Changing attitudes meant changing legislation. Between 1887 and 1908 many states passed laws curbing drug distribution, but it was not until December 1914, that Congress passed its first comprehensive narcotics legislation. The Harrison Narcotic Act limited the possession, processing, and sale of opium and cocaine. This law brought the federal government—specifically the Treasury Department—into drug enforcement by requiring all drug producers and distributors to register with the government and to record and pay a tax on all domestic drug transactions.²²

Customs' main jobs during these years of readjustment were

²¹ Alma Dufour to William J. Bryan, May 11, 1914; and Ernest K. Coulter to Woodrow Wilson, October 8, 1914, Decimal File 811.114/51, 58, Traffic in Liquor and Dangerous Drugs (1910-1929), Record Group 59, Department of State, National Archives, Washington D.C.

²² Cloyd, *Drugs and Information Control*, p. 55; Duster, *Legislation of Morality*, pp. 14-15; Laurence F. Schmeckebier, *The Customs Service: Its History, Activities, and Organization* (Baltimore: 1924), p. 76. The Harrison Act also made it illegal to buy drugs without a prescription. This in turn created a healthy black market, one that, judging by the number of drug stories appearing in the *New York Times*, grew geometrically after 1914.

collecting duties on drug imports, checking on the legality of drug exports, and keeping after the smuggling which continued unabated on both coasts.²³ San Francisco officers arrested one Wong Fu (known as the "Babe Ruth of the Flowery Republic") in December 1920 as he disembarked from the *Venezuela* carrying a false passport and \$7,500 worth of opium sewn into his clothing. A month later, inspectors found another \$80,000 worth of the drug in 400 tins hidden in the hollow wall of another vessel. Customs crews in Boston searching the "Chinese quarters in the after part of the ship" found "1 box Persian gum opium; 1 jar, 1 tin, and 4 tares of smoking opium; 2 cans yen shi; 3 small packages crude opium; 3 cans opium solution; 4 opium pipes; 2 scales; [and] 1 box containing lamps and layout."²⁴ And in 1925 Customs cracked a multinational operation that shipped contraband in whatever merchandise was handy along a route that stretched from Basel to Antwerp to Cuba or China, and finally to the United States.²⁵

Smuggling was not, of course, an exclusively Chinese enterprise. Vittorio Sorrentino smuggled cocaine into New York in barrels of olive oil until a curious customs gauger discovered the cans with his probe. European cocaine crossed the border at Rouses Point, New York, along with bootleg liquor. Hawaiian smugglers followed ocean liners into port, hoping to pick up packages of opium that crew members had dropped overboard; the collector at Honolulu got permission to mount guns on the big ships in order to shoot at the scavengers who fished up nearly 500 tins a month. And German crews on ships of the North German Lloyd line "left their jobs at short notice to visit sick

²³ Treasury Department Circular 48, June 21, 1915, Archives of the U.S. Customs Service, Washington, D.C.

²⁴ *San Francisco Chronicle*, December 6, 1920, and January 5, 1921; W.W. Lufkin to Mr. D. Morgan, February 3, 1923, "Letters Re Customs, Immigration and Navigation Fines (January 31, 1923-June 7, 1923)," Boston Custom House Records, Record Group 36, Customs, National Archives Regional Branch, Waltham, Massachusetts.

²⁵ "Seizures Reveal International Syndicate Ships Drugs in Bedsteads, Safes and Watches," *New York Times*, August 19, 1925.

relatives" once the customs staff in Hoboken, New Jersey, uncovered a smuggling ring that included doctors and druggists, as well as deckhands.²⁶

At the same time that customs officers were battling the cocaine epidemic that accompanied the Volstead Act, the Customs Service was facing challenges to its jurisdiction, primarily from the Internal Revenue Service (IRS). The IRS was involved because all sales had to be registered, the Customs Service because both ports and importers had to be monitored. Cooperation between the two agencies was essential if smuggling were to be suppressed, although such cooperation was not always forthcoming.²⁷ For example, in 1921 an Italian ring was broken by detectives from the Treasury Department's Narcotics Division who were assisting two Internal Revenue Narcotics Squad men. One of the IRS agents, acting as a decoy, lured the *capo* into a restaurant on Eighth Avenue in New York City, where waiting colleagues arrested him with the goods. The ring had been smuggling drugs from Europe into several American cities, yet Customs' participation in this sting was conspicuously absent. Whose territory was it? ²⁸

The question grew more and more muddled during the Roaring Twenties. In 1922, the Federal Narcotics Control Board, consisting of the Secretaries of State, Treasury, and Commerce, was created within the Treasury's Narcotics Division to look after the provisions of both the Harrison and the Narcotics Drugs Import and Export Acts. The latter limited exports to those countries with their own drug licensing and control systems. The

²⁶ "Held As Cocaine Smuggler," *ibid.*, August 3, 1921; "Big Drug Haul on Border," *ibid.*, July 11, 1923; "Wants Liner To Mount Gun," *ibid.*, July 21, 1923; "To Arm Pacific Ships Against Opium Bands," *ibid.*, July 11, 1923; "Smugglers' Big Profits," *ibid.*, February 17, 1909; "First Arrest Made In Smuggling Plot," *ibid.*, February 14, 1909; "Two More Arrests In Smuggling Case," *ibid.*, February 16, 1909.

²⁷ Musto, *American Disease*, pp. 67-68, 146, 197; Schmeckebier, *Customs Service*, p. 76; Veronica Doherty Hill, *The History of the Customs Service as the Parent of Other Federal Agencies* (Germantown, Md.: 1985), p. 94.

²⁸ "Trapped As Chief of Drug Syndicate." *New York Times*, September 17, 1921.

following year the board was transferred to the Narcotics Division of the Office of Prohibition in the Internal Revenue agency. In 1927, when there were more inmates in federal prisons on narcotics charges than there were on prohibition violations, Congress created the Bureau of Prohibition within the Treasury Department.²⁹ This legislation too was flawed because it failed to grant Customs officers' authority to narcotics agents. All the duties and powers that had been granted to the Commissioner of Internal Revenue now resided in the Secretary of the Treasury, who in turn delegated them to the Commissioner of Prohibition. Customs officers now had to report any tips or leads about dope smuggling to the special agent for the district. This agent then had to decide whether to notify the narcotics agent in charge so that the two could collaborate on the case, or to do all the legwork alone. Although each agency had its own sources and *modi operandi*, the two were enjoined to share all possible assistance, information, and evidence, and to cooperate wholeheartedly, with no jealousy or rivalry, in breaking up smuggling rings.³⁰

This solution to the duplication and confusion of authority was no more satisfactory than the others, and so in 1930 Congress tried again by establishing a Bureau of Narcotics within the Treasury Department. This bureau was to administer all laws dealing with narcotics, drugs, and marijuana. A Commissioner of Narcotics replaced the Commissioner of Prohibition. Although it made logistical sense to locate this new agency with its two main enforcing services (Customs and Coast Guard) in the Treasury Department, the new office made as much trouble as it was intended to save. Customs fought territorial wars with the new bureau, mainly because they shared the same mission: to control the importation and distribution of illegal drugs.

²⁹ "Breakers Of Narcotics Laws Outnumber Wet Convicts," *ibid.*, January 24, 1927.

³⁰ Laurence F. Schmeckebier, *The Bureau of Prohibition: Its History, Activities and Organization* (Washington, D.C.: 1929), p. 30.

The War on Drugs

Having to share its historic powers to enforce drug and alcohol restrictions frustrated the Customs Service. So did widening the war on drugs to include marijuana. The campaign against this weed nearly paralleled that against alcohol. By 1930 the government had begun endorsing news reports and xenophobic allegations that proved a causal link between marijuana and "insanity, crime, violence, and moral degradation." Marijuana, however, was, like alcohol, a social drug; both competed for the same dollars, and marijuana control elicited the same sort of public cynicism that alcohol control did. The passage of the Marijuana Tax Act of 1937, which outlawed the transportation of that narcotic, meant an additional difficult job for Customs, and one it lacked the authority and resources to lick.³¹

Despite claims by the Commissioner of Narcotics that drug smuggling decreased during the 1930's, the Customs Service saw things otherwise. New York Collector Harry Durning noted that the rumrunners were now running dope and that his agents were switching gears to foil them. A confidential circular sent to customs agents in 1936 warned that "smuggling of narcotic drugs had become a more important customs enforcement problem than the smuggling of alcoholic liquors." Officers were cautioned to be especially careful in searching ships that touched Asian ports and to keep an eye open for drugs stashed in cans that looked like tobacco tins, in padded clothing and in false compartments of steamer trucks. Inspectors needed extraordinary vigilance to find these small, easily disguised packets of poison, and "the Bureau expects vigorous and aggressive action on their part in the effort to eradicate narcotic smuggling." ³²

³¹Roger C. Smith, "U.S. Marijuana Legislation and the Creation of a Social Problem," in David E. Smith, ed., *The New Social Drug: Cultural, Medical, and Legal Perspectives on Marijuana* (Englewood Cliffs, N.J.: 1970), p. 109; Smith, *The New Social Drug*, p. 1; Douglas Clark Kinder and William O. Walker III, "Stable Force in a Storm: Harry J. Anslinger and United States Narcotic Foreign Policy, 1930-1962," *Journal of American History*, vol. 72, no. 4 (March 1986), p. 909.

³²Arthur C. Millspaugh, *Crime Control in the National Government* (Washington, D.C.: 1937), pp. 220-21, 286; "Liquor Smugglers Quit, Turn to

THE U.S. CUSTOMS SERVICE

REGROUPING TO WIN THE WAR ON DRUGS

For more than 30 years, Customs and the Federal Bureau of Narcotics were the nation's major drug enforcement agencies. During those decades drug use rose and fell, certain narcotics went in and out of fashion, and new buyers and sellers entered the black market. When the Federal Bureau of Narcotics was established, drugs had come to be associated with minorities, musicians, and other "artistic" types. Near the end of its reign, however, the children of the white middle class had evolved their own drug culture, and were "tuning in, turning on, and dropping out" in ever-increasing numbers. The threat had changed. As Pogo observed, "We have met the enemy and it is us." Federal policy had to adapt.

The government had tailored its tactics before. Opium legislation was overwhelmingly anti-Chinese when the country feared immigrant hordes. It focused on stiffer penalties for the members of perceived criminal or Communist conspiracies who encouraged a midcentury rise in heroin addiction. And it chose stricter enforcement to combat the youthful counterculture that was turning its back on traditional, dominant American values in the late 1960's.³³

But first the government had to get its own house in order. President Lyndon Johnson's Reorganization Plan of 1965, which overhauled the Customs Service by eliminating all Presidential and senatorial appointees and collapsing its seven subdivisions into four. A 1968 plan tried to end 30 years of squabbling by transferring the Federal Bureau of Narcotics from the Treasury to the Justice Department, marrying it to the Department of Health, Education, and Welfare's Bureau of Drug Abuse, and establishing the Bureau of Narcotics and Dangerous Drugs

Other Rackets," *New York Times*, February 20, 1934; Bureau of Customs Circular 1629, October 9, 1936, Archives of the U.S. Customs Service, Washington, D.C.

³³ Cloyd, *Drugs and Information Control*, pp. 78-79, 72-73, 82-83.

(BNDD).³⁴ Now the Customs Service had new competition in the field, but the basic question of overlapping missions was not addressed. Customs' job was still to protect the nation's revenue by assessing and collecting tariffs on goods brought into the country, and by seizing smuggled goods, including illegal drugs. The BNDD's job was to stop the drug traffic. Because all hard drugs originate outside the United States and must be "imported," all BNDD cases technically start as customs cases. Whereas Customs concentrated on border operations (occasionally pushing the border several miles inland to complete an arrest), and the BNDD preferred to follow its leads and work undercover, each agency singlemindedly went after the credit and resources and Presidential approval that went along with collecting the greatest number of drug dealers' scalps.³⁵

Neither willingly cooperated with the other. Each jealously guarded its lists of suspects, tips, and plans. The results of this often childish competition were usually highly counterproductive. For example, when a drug dealer offered to "finger" some really big dealers for the BNDD, that agency graciously invited the customs investigators who happened to be looking into the case on their own to be present for the event. Customs accepted, and on the appointed night its special agents took their agreed-upon posts in the Waldorf-Astoria Hotel. The BNDD people then decided to catch the targets before they even entered the hotel, but somehow they forgot to tell the customs men, who vainly waited inside all night.

In another case, both Customs and BNDD operatives found themselves on the same New York street staking out the same heroin-laden Citroën. In their eagerness to make the bust, the BNDD moved closer to the car. Not wanting to be beaten out, Customs edged its surveillance team closer. The BNDD inched forward again, and, like cars waiting for a red light to change, so

³⁴Kaiser, *U.S. Customs Service*, pp. 24-27; Hill, *History of the U.S. Customs Service*, p. 97.

³⁵Patricia Rachal, *Federal Narcotics Enforcement: Reorganization and Reform* (Boston: 1982), p. 56.

did the customs team. Whoever was supposed to collect the car obviously noticed this peculiar pas de deux and decided to leave them to it. Neither Customs nor the BNDD got any credit for that operation.³⁶

The consolidation that had looked so good on paper had proved to be a bitter contest in reality. Interagency hostilities raged until 1973, when President Nixon, fed up with bureaucratic rivalry, decided to reorganize federal drug enforcement once again. By so doing he hoped to achieve greater efficiency and to unite a fractious population against a common enemy—drugs.

From the late 1960's on, Customs, with its augmented authority, especially the Bank Secrecy Act, was able to get at the heart of enforcement in ways that interdiction alone could not. A good example is Customs ability to identify the flow of drug dollars into the country, which has led to huge seizures of drugs and proceeds from this illegal activity.

The Reorganization Plan of 1973 scrapped the BNDD and built a new superagency, the Drug Enforcement Administration (DEA). Although this too was technically located in the Justice Department, the DEA was designed to lead the war against the illegal drug traffic. The DEA would do this by absorbing the personnel and budgets of Customs and the antidrug agencies in Justice. It also took responsibility for the development and implementation of enforcement strategies to investigate, arrest, and prosecute suspects, as well as to conduct drug enforcement negotiations with foreign governments.

The BNDD gave the new agency its personnel and its organizational base. Customs turned over its intelligence, investigative, and law enforcement responsibilities, along with 509 agents, a support staff of 200, and an "assortment of equipment, including aircraft, helicopters, boats, office furniture and supplies, vehicles, firearms, tape recorders, radios, cameras, and

³⁶Rachal, *Federal Narcotics Enforcement*, p. 59.

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binoculars.”³⁷ INS was to return to Customs many of the duties it had taken upon becoming independent in 1906, and give up as many agents as needed to reestablish Customs as the primary port-of-entry inspection agency. This last provision drew considerable fire from the INS and was subsequently repealed by Congress. Customs thus gave up much and received nothing in return but more work.³⁸

The creation of the DEA forced the Customs Service to reevaluate itself and its place in federal drug enforcement activities. Profoundly threatened by the loss of its own intelligence data base to the DEA's new system at the El Paso Intelligence Center, the Customs Service realized that it would have to do some reorganization of its own.³⁹ Splitting its enforcement duties in two, it rejuvenated the old Patrol and established the Office of Investigations. The latter looked into violations of customs and other laws at home and abroad, often taking advantage of its foreign operatives to do so.⁴⁰ Customs' Patrol concentrated on stopping the smuggling of drugs and other contraband through the ports. To catch larger shipments, the Customs Service has also increased its surveillance of the unguarded border lands between ports by using planes that can fly low over those areas, as well as by beefing up its ground forces. The internal reorganization quickly paid off in more arrests. This result not only allowed Customs to reaffirm its traditional role in drug interdiction, but also supported its claim to being the DEA's equal in power and efficiency.⁴¹

Nixon's plan still dictates federal narcotics enforcement

³⁷ Kaiser, *U.S. Customs Service*, p. 35.

³⁸ Ibid., pp. 32-34; Hill, *History of Service*, pp. 98-99; U.S. Customs Service, *The History of the Evolution of Customs Through Job Titles* (Washington, D.C.: 1984), p. 19; Stuart Seidel, memorandum of March 24, 1989, U.S. Customs Service Archives, Washington, D.C.

³⁹ Hill, *History of the U.S. Customs Service*, p. 107.

⁴⁰ Rachal, *Federal Narcotics Enforcement*, p. 62.

⁴¹ Hill, *History of the U.S. Customs Service*, pp. 101-02; U.S. Customs Service, "United States Customs Service Accomplishments, 1982-1986" (Washington, D.C.: 1986), p. 10, Archives of the U.S. Customs Service, Washington, D.C.; Rachal, *Federal Narcotics Enforcement*, pp. 111-16.

operations. Although later government studies and evaluations continued to point out the persistent problems of "overlap, duplication of effort, and lack of coordination" at our borders, there are signs that this situation may be improving.⁴² After more than 10 years, the Customs Service and the DEA have come to a wary truce that is based primarily on their division of duties. The DEA has specialized in the sort of work the BNDD used to do: undercover jobs to catch the masterminds behind the major smuggling conspiracies. In one of their typical "stings" reminiscent of Prohibition, DEA agents were given money to buy heroin from and immediately arrest the head of a Boston ring.⁴³ Customs, meanwhile, has concentrated on what it does best, straightforward border searches and seizures. Occasionally the two work together. In 1982, for example, the DEA was tipped off about cocaine that was to be smuggled from Bolivia. The smugglers had booked a through flight from South America to West Germany, planning to switch the dope-laden luggage in New York during the flight's layover when they and their bags enjoyed the Customs *de facto* immunity granted passengers in transit. The DEA asked the Customs Service to detain the suspects in the transit lounge and to arrange a search of their baggage. Customs agents found the cocaine and shared the credit with the DEA.⁴⁴

Customs' working relationship with INS, at first nearly destroyed by the reorganization plan, is improving too. The two cooperate to identify and apprehend suspicious persons at ports of entry. INS agents are the first to see incoming passengers and can alert customs inspectors to watch the ones who appear evasive, inconsistent, or overly nervous during routine questioning; who are very worried about their baggage; whose luggage is

⁴²Kaiser, *U.S. Customs Service*, pp. 43 ff. The two studies, both made in 1977, were the Office of Drug Abuse Policy Review and the President's Reorganization Project Draft Report.

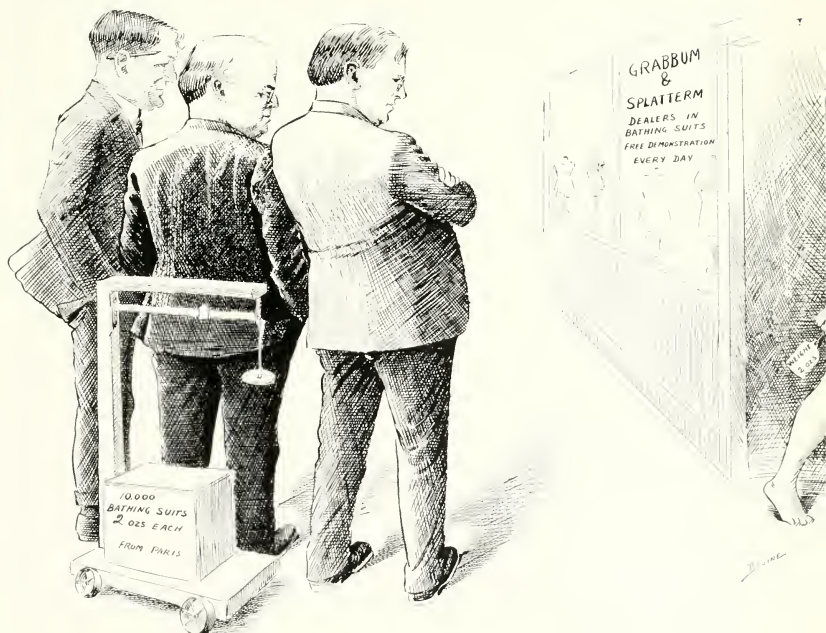
⁴³Michael Hedges, "Drug Agency Rigs 'Buy-Busts' to Destroy Selling Operations," *Washington Times*, November 11, 1986.

⁴⁴*U.S. v. Muench*, *Federal Reporter, Second Series*, vol. 694 (St. Paul: 1983), p. 28.



Variations in uniforms worn by Customs officers in Buffalo, New York, 1905.

Customs officers in San Francisco caricature themselves. *U.S. Customs and Kindred Services*, San Francisco, 1915.





Customs enforces Prohibition, c. 1922.



DECLARATION SHEET.

DIRECTIONS: Write the examination number, which is given above, on the accompanying envelope, and also on your preliminary sheet, and on each sheet of the examination. Make no error in transcribing this number, because it is the Commission's only means of identifying the examination sheets.

Fill all blanks on this sheet.

Write all answers and exercises with ink.

Write your name on no other sheet than this.

Carefully fold this sheet in four folds, from bottom to top twice, then place it in the envelope and seal the envelope.

DECLARATION.

I declare upon my honor that the answers to the following questions are true, to the best of my knowledge and belief:

Question 1. What examination have you been authorized to take?

Mounted Inspector

Give exact title of examination, as—departmental clerk, railway mail clerk, compositor, stockholder, etc.

Question 2. When and where were you born?

Sept 28 *87* *San Antonio* *Brewster* *Texas*
Month Day Year City or town County State

Question 3. Where is your legal residence and how long have you been a legal resident there?

San Antonio *Brewster* *Texas* *21* *11*
City or town County State Years Months

Question 4. What are the names of two persons who signed the vouchers to your application?

W. B. Robinson *J. J. Brown*

Question 5. What is your exact height measured in your bare feet?

5 *7*
Feet Inches

Question 6. What is your exact weight in ordinary clothing?

160 lb.

Question 7. Are you now in physical condition to justify you in taking this examination at this time? (If the applicant is ill he must give information of the fact to the supervising examiner before commencing the examination, and state in answer to this question that he has done so.)

I am in good condition

N. B.—Your signature identical with that used on application. If the P. O. address here given differs from that on the application, indicate such fact by notation on the margin of this sheet.

(Signature),

J. J. Brown

(Post-office address), Street,

San Antonio

City or Town,

San Antonio

County,

Brewster



Customs office on the Blackfoot Indian Reservation in Montana, 1927.

Enforcing Prohibition on the Northwest Border, 1930.





Customhouse, Fabens, Texas, 1939.

TOMMY COOPER

Aliases: Moses (Moe) Liss; Theodore Liss

Washington, June 1, 1936
BLACKLIST NO. 133.



Nationality: American

Residence: New York City

Age: 34 years

Height: 5 feet, 6½ inches

Weight: 130 pounds

Hair: Dark chestnut

Eyes: Brown

Complexion: Sallow

In March, 1934, acting upon information that a gang of narcotic traffickers was operating from, and maintaining an establishment known as the "Liberty Restaurant" in New York City, Narcotic Agents, after an investigation lasting several months, seized a large quantity of heroin, cocaine, morphine, smoking opium and opium dross and arrested ten of the principals. Tommy COOPER, a notorious narcotic trafficker with a long criminal record was not apprehended at the time. However, he was picked up by New York Police in May, 1934, on a homicide charge, and following the dismissal of the case against him because of insufficient evidence, he was turned over to Narcotic Agents for prosecution on the narcotic charge. On June 19, 1934, he was sentenced to 2 years' imprisonment.

From an intelligence book used by Customs officers, 1936.





Customs testing opium, Seattle, 1940.



International Arrivals area at John F. Kennedy International Airport in New York, 1960-present.

GENERAL DECLARATION

(Outward/Inward)

AGRICULTURE, CUSTOMS, IMMIGRATION, AND PUBLIC HEALTH

Owner or Operator NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Marks of Nationality and Registration U.S.A. Flight No. APOLLO 11 Date JULY 24, 1969
Departure from MOON Arrival at HONOLULU, HAWAII, U.S.A.
(Place and Country) (Place and Country)

FLIGHT ROUTING

("Place" Column always to list origin, every en-route stop and destination)

PLACE	TOTAL NUMBER OF CREW	NUMBER OF PASSENGERS ON THIS STAGE	CARGO
CAPE KENNEDY	COMMANDER NEIL A. ARMSTRONG	<u>Departure Place:</u> Embarking NIL Through on same flight NIL <u>Arrival Place:</u> Disembarking NIL Through on same flight NIL	MOON ROCK AND MOON DUST SAMPLES Cargo Manifests Attached
MOON	<i>Neil A. Armstrong</i>		
JULY 24, 1969 HONOLULU	COLONEL EDWIN E. ALDRIN, JR.		
	<i>Edwin E. Aldrin Jr.</i>		
	<i>M. Collins</i>		
	LT. COLONEL MICHAEL COLLINS		

Declaration of Health

Persons on board known to be suffering from illness other than airsickness or the effects of accidents, as well as those cases of illness disembarked during the flight:

NONE

Any other condition on board which may lead to the spread of disease:

TO BE DETERMINED

Details of each disinsecting or sanitary treatment (place, date, time, method) during the flight. If no disinsecting has been carried out during the flight give details of most recent disinsecting:

Signed, if required

Crew Member Concerned

For official use only

HONOLULU AIRPORT
Honolulu, Hawaii
ENTERED

E. J. M. M. M.
Customs Inspector

I declare that all statements and particulars contained in this General Declaration, and in any supplementary forms required to be presented with this General Declaration are complete, exact and true to the best of my knowledge and that all through passengers will continue/have continued on the flight.

Astronauts declare moon samples, Honolulu, 1969.

Customs and the French
Connection, 1971.



U.S. Customs Service patrol
helicopters in action over the
Gulf of Mexico, 1974.





Headquarters of the U.S. Customs Service, 1975 to date.

Searching for narcotics, 1980.





P-3 airborne early warning aircraft, 1988.





Operation Saber broke up a conspiracy responsible for smuggling more than 5,000 kilograms of cocaine into the country, La Jolla, California, 1988.



▲ Tampa cocaine seizure—Customs found 7,300 pounds of cocaine stashed inside cedar boards in a containerized vessel shipment, 1988.



Patrolling in Kennebunkport, Maine, with the home of President George Bush in the background.

unusual in any way; or whose passports show evidence of many trips abroad in a relatively short time. INS inspectors also check passenger names against automated wanted lists.⁴⁵ This coordinated effort caught Herbert Baumann, who flew into Baltimore/Washington International Airport on April 17, 1986. The INS inspector checking Baumann's passport noticed that he "had no visible means of support and was otherwise suspicious," and asked Customs to investigate. During a baggage check, customs agents found a strange brick that Baumann claimed was a paperweight. The paperweight turned out to be 250 grams of hashish, and Baumann was arrested.⁴⁶

The INS is also aware of a correlation between drug and alien smuggling. A century ago Chinese laborers carried opium across the Canadian border. Today Mexican laborers laden with marijuana, heroin, and cocaine are helped over the Rio Grande. In fact 90 percent of the people arrested in Santa Ana, California, on drug charges in early 1986 were illegal aliens. Both Customs and the INS have recognized the need for cooperation to stop "narco-traffickers" from using these migrants as their couriers.⁴⁷

The Customs-Coast Guard connection harks back to Prohibition. Customs boats and Coast Guard cutters patrol coastal waters, Customs checks the reports, and the DEA prosecutes the malefactors. In a typical case, a cutter off the South Florida coast may stop a suspicious fishing boat, check it for customs and narcotics violations, find several bales of marijuana, and turn the haul over to customs agents back in port, who, in turn, will call in the DEA.⁴⁸ These days, the Customs Service not only

⁴⁵ Comptroller General of the United States, "Heroin Being Smuggled into New York City Successfully," Publication B-164031 (2) (Washington, D.C.: 1972), Archives of the U.S. Customs Service, Washington, D.C.

⁴⁶ Regional Commissioner, Northeast Region, Weekly Management Brief MAN-1-0, May 1, 1986, Archives of the U.S. Customs Service, Washington, D.C.

⁴⁷ Joel Brinkley, "Immigration Bill Pressed By Meese," *New York Times*, September 18, 1986; "Border Drug Situation," *Bridgeport (Connecticut) Post*, May 23, 1986.

⁴⁸ *U.S. v. Clark*, *Federal Reporter, Second Series*, vol. 664 (St. Paul: 1982), p. 1174.

has its own boats in the water, but also has its own surveillance planes over it, in order to cover a greater area. In 1986 the two services also formed a Joint U.S. Coast Guard-Customs Maritime Law Enforcement training program for their opposite numbers in several Caribbean nations. This effort is designed to show other officers the benefits of teamwork in "boarding procedures, search techniques, use of force, evidence handling, and drug identification." ⁴⁹

Another sort of interagency cooperation has grown during the DEA era between civilians and the military. The 1878 Posse Comitatus Act (18 U.S.C. 1385) prohibits the use of the Army or Air Force (and, by extension, the Navy or Marine Corps) in the direct enforcement of civil law, although military units may provide assistance to enforcing agencies. The limits of this aid are not clearly defined, however. No one was quite sure, for example, of such things as whether an Air Force pilot could fly a customs patrol mission on an Air Force plane until the General Accounting Office ruled in 1977 that military services could indeed transport civilian agents.⁵⁰ This interpretation has stretched over the years. By the late 1980's the Department of Defense was far more involved in drug enforcement than it ever imagined it would be. Navy crews and vessels regularly go on "Coast Guard Assist" duty, snatching time from their Soviet submarine searches to look for drug runners, calling in Customs or the Coast Guard to make the arrest and seizure.⁵¹ A far more dramatic deployment of military force was the transport of U.S. Army troops and equipment to help the DEA and Bolivia close down cocaine-processing plants in that South American nation.⁵²

⁴⁹ Assistant Commissioner, Office of Internal Affairs, Weekly Management Brief MAN-1-IN:PM BER, August 28, 1986, Archives of the U.S. Customs Service, Washington, D.C.; Elaine Shannon, "Running Silent, Running Fast," *Newsweek*, October 27, 1986.

⁵⁰ Kaiser, *U.S. Customs Service*, pp. 41-43.

⁵¹ James Gerstenzang, "Military as Drug Police: Double Duty," *Los Angeles Times*, October 1, 1986.

⁵² Joel Brinkley, "U.S. Sends Troops To Aid Bolivians in Cocaine Raids," *New York Times*, July 16, 1986; Stuart Taylor, Jr., "Bolivia Plan: Legal

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The 1973 reorganization has helped the federal government take advantage of certain ambiguities in the law and in the jurisdiction of its branches to widen and strengthen its drug enforcement activities. It has done little to end interagency conflict and acrimony, however. Primarily because it simply took over an old organization without rethinking or remodeling a new one, the DEA has not been able to quash internal competition, and the individual agencies complain of fragmented and often inconsistent power and authority.⁵³ The Departments of Justice and the Treasury, however, can both make seizures for violations of the Controlled Substances Act (21 U.S.C. 881).⁵⁴

In 1982 Vice President George Bush announced the establishment of the South Florida Task Force, combining Customs' resources as well as those of other federal agencies. In 1985 Customs augmented this initial effort with Operation Blue Lightning, a successful initiative to disrupt drug smuggling via fast boats from the Bahamas. Blue Lightning conferred federal authority on state and local law enforcement officers to assist in the interdiction mission. Blue Lightning's success diverted drug smuggling activity to the Mexican border.⁵⁵

Three years later Vice President Bush and Attorney General Meese announced "Operation Alliance," a broad, multiagency program for the entire Southwest border, patterned after Blue Lightning. Drug policy, like politics, makes strange bedfellows. Participating in this latest assault were the Army, the Navy, and the Air Force; the Bureau of Alcohol, Tobacco, and Firearms; the Coast Guard; the Customs Service; the Department of State; the DEA; the Federal Aviation Administration; the FBI; the

Doubts," *ibid.*, July 16, 1986; Bradley Graham, "U.S. Army Joins Bolivian Drug Drive," *Washington Post*, July 16, 1986.

⁵³Rachael, *Federal Narcotics Enforcement*, pp. 142-43.

⁵⁴Michael T. Schmitz, Chief Counsel, Weekly Management Brief MAN-01 CC: MEC, September 18, 1986, Archives of the U.S. Customs Service, Washington, D.C.

⁵⁵Michael Hedges, "Drug Task Forces Get Good Grades, but Narcotics Still Flood into U.S.," *Washington Times*, August 28, 1986; Stuart Seidel memorandum of March 24, 1989, U.S. Customs Service Archives, Washington, D.C.

INS/Border Patrol; the Internal Revenue Service; the National Intelligence Community; the U.S. Marshals Service; the U.S. Secret Service; and state and local law enforcement units. Customs, assisted by the INS, was put in charge of the ports, while the Border Patrol ran its mobile strike force between the cities. The DEA, Customs, and the FBI conducted separate and joint investigations. The U.S. Marshals aided Customs in some land searches, while the Coast Guard helped with those by air and sea. Local authorities were expected to help when asked.

The program's goal was to bring such pressure to bear on the border that the drug traffic would dry up. Such a policy worked in South Florida. The traffic there slowed. The air arm of the Customs Service deploys more than 100 planes, depending heavily on high-tech detection and communications equipment. Starting in 1974, Customs expanded operations to the Southwestern border after significant success in the Southeast. Two command centers—in Miami and in Riverside, California—control the operations of this civil air force.⁵⁶

It remains to be seen whether these operations improve drug interdiction or end the turf wars. In an era of growing deficits and shrinking budgets, the competition among the agencies for resources is keen. This situation is likely to continue as long as money is perceived to be the key to the problem. More officers, more radar planes, and more paramilitary operations with cryptic names may not, however, be the best way to solve the drug problem. Even DEA chief John C. Lawn has admitted that "law enforcement cannot, did not, and will not solve the appetite for drugs in this country."⁵⁷

⁵⁶Francis A. Keating, "Operation Alliance: Law Enforcement's Most Widespread Interdiction Program," *Police Chief*, October 1986, pp. 47-48; U.S. Customs Service Office of Enforcement, Smuggling Investigations Division, "Smugglers' News," vol. FID4-FY86, p. 3, Archives of the U.S. Customs Service, Washington, D.C.; oral interviews with Al Wenzlaff, Aviation Group Supervisor, San Antonio Aviation Unit, March 23, 1989.

⁵⁷Joel Brinkley, "Drug Law Raises More Than Hope," *New York Times*, November 2, 1986.

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OPENING OTHER THEATERS: DRUG ENFORCEMENT AND FOREIGN RELATIONS

America's drug problem is obviously not entirely domestic. Although there are always a few enterprising gardeners raising their own marijuana crop in their backyards, most narcotics reach the United States from the Orient, the Mideast, and South America. The government has long recognized that cooperation with drug-producing and drug-exporting nations is essential to stop this global traffic, and has, during the course of the 20th century, tried a variety of approaches. The genteel agreements to limit and prohibit opium that were signed at Shanghai and The Hague before World War I evolved into military understandings after World War II. Customs has fought in all these campaigns, enforcing treaties, investigating and interdicting incoming and outgoing contraband, and even on occasion taking command and advocating policy reform.

International drug control conferences in the early 20th century made a great show of unity among the nations of the world, and forced several of them to regulate narcotics within their own jurisdictions for the first time. Extensive research into the production, distribution, and use of narcotics in the participating countries preceded the Shanghai Conference in 1909. The United States passed its law prohibiting the importation of smoking opium before that meeting, and from its resulting exemplary moral position was able to put the legal responsibility for opium traffic on the shoulders of the producing nations of Persia, Turkey, India, and China.⁵⁸ If this meeting produced little more than good intentions, The Hague conference three years later did not get much further than acknowledging the dangers of other drugs. Participants in the negotiations there pledged "their best efforts to control or cause to be controlled those who manufacture, import, sell, distribute, or export morphine, co-

⁵⁸Cloyd, *Drugs and Information Control*, p. 51; Musto, *American Disease*, p. 9; Document 52a, Decimal File 811.114, 1909, Record Group 56, Department of State, National Archives, Washington, D.C.

caine, and their respective salts," but did not devise any practical means of doing so.⁵⁹

The absence of international control spurred the development of domestic restraints. The Harrison Narcotic Bill of 1914 was an almost direct response to The Hague's empty resolutions. Besides restricting and taxing opium and cocaine within the United States, this law prohibited their export to any country that did not regulate their entry and use. The Treasury Department, through its newly created Narcotics Division, was in charge of enforcing the tax; through its collectors of customs it made sure that all drug shipments met the laws of the importing nation.⁶⁰ Congress also passed an Opium Act that year as part of its commitment to The Hague's "Convention for the Suppression of Abuse of Opium and Drugs." Customs officers were to enforce this by making sure that drug shipments to China did not offend Chinese opium import regulations.⁶¹

The government also encouraged cooperation with foreign customs services. For example, Canadian officers agreed in 1916 to look into the persistent problem of smuggling through Vancouver, British Columbia.⁶² This sort of cooperation continued well into Prohibition: The 1925 Hughes-LaPointe Treaty called for open communication and exchange of information between Canadian and American customs and prohibition agents regarding drug and alcohol smuggling. It also provided for the extradition of narcotics offenders.⁶³

⁵⁹Cloyd, *Drugs and Information Control*, p. 55.

⁶⁰Musto, *American Disease*, p. 50; Cloyd, *Drugs and Information Control*, p. 55; Schmeckebier, *Customs Service*, p. 77; Secretary of State Lansing to Secretary of Treasury McAdoo, November 15, 1915, Decimal File 811.114/66, p. 101, Record Group 59, Department of State, National Archives, Washington, D.C.; Treasury Decision 34221, March 3, 1914, Archives of the U.S. Customs Service, Washington, D.C.

⁶¹Hill, *History of the U.S. Customs Service*, p. 94; Secretary of State Lansing to Thomas Sammons, October 20, 1916, Decimal File 811.114/101, Record Group 59, Department of State, National Archives, Washington, D.C.

⁶²Secretary of State Lansing to Secretary of Treasury McAdoo, November 8, 1916, Decimal File 811.114/105, Record Group 59, Department of State, National Archives, Washington, D.C.

⁶³"Border Rum Treaty Effective July 27," *New York Times*, July 18, 1925.

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The rise in drug prices and addiction that followed the restrictions of the Harrison and Volstead Acts created a bullish international black market in drugs that has not stopped growing in size or sophistication. This has made drug enforcement a major concern of our foreign policy, and one that has brought Customs out of the Treasury Department and into the trickier currents of international diplomacy.

Sometimes the role is an outgrowth of an existing relationship. During the 1920's, for instance, American customs agents relied on the cooperation and vigilance of their Bahamian counterparts to help dry up the rum rows. During the 1980's the United States and the Bahamas ran several joint drug enforcement programs to stop the flow of narcotics through the islands to the American mainland. But instead of relying on the goodwill of diplomats and a few offshore undercover agents, today's interdiction programs depend on massive U.S. aid. In October 1986, Bahamian Prime Minister Sir Lyden Pindling came to Washington to lobby for a \$54 million package that would greatly increase the number of American enforcement agents in his country. With more money, personnel, and equipment, he promised, the Bahamas could help the United States catch the smugglers who refuel and regroup in secluded coves on the more than 2,700 islands of his nation.⁶⁴

Drug enforcement agents are also in place in Africa, a developing smuggling center conveniently located halfway between Eastern producers and Western consumers. Customs officials have arrested several Nigerian nationals who have tried to bring heroin into the United States by "stuffing" five or seven ounces of the drug into a condom and inserting it into their bodies. Using information supplied by the DEA, Customs is also looking for other members of the five major rings with headquarters in Lagos.⁶⁵

⁶⁴Mary Thornton, "Bahamas Asks U.S. for More Antidrug Help," *Washington Post*, October 4, 1986; Joel Brinkley, "In Fighting Drug Traffic, Attitude Wins the Aid," *New York Times*, October 7, 1986.

⁶⁵Charles T. Powers, "Nigerians Getting High on Profits of Drug Smuggling, Authorities Say," *Los Angeles Times*, April 17, 1986.

The situation in Latin America is somewhat more complex. The United States has tried several solutions to that smuggling problem. Following a strategy first suggested and attempted into the 1920's, the government in the 1980's pressured coca-producing countries to eradicate their crops. This effort yielded mixed results: Colombia destroyed 80 percent of its marijuana crop in two years, and Jamaica and Belize made comparable reductions.⁶⁶ Other countries needed economic incentives to heed diplomatic requests. In 1982 Congress passed a law requiring "the U.S. to withhold foreign aid to drug trafficking countries that, in the President's view, do not make adequate progress in attacking the problem."⁶⁷ In order to continue to receive its aid, Bolivia was supposed to wipe out half of its 20,000 acres in coca production; it took care of 75 acres. Rather than lose the money, Bolivian officials asked for military aid, and, in July 1986, the Reagan administration sent a C-5A military transport carrying six helicopters; a C-130 with trucks, jeeps, radios, and camp gear; and more than 100 people to help Bolivia persuade its coca growers to find some other crop.⁶⁸ This was not the first time force had been used on South American fields. Earlier that year DEA agents had accompanied a Peruvian strike unit in U.S.-financed raids on Peru's "Coca Valley."⁶⁹

Although customs personnel are generally excluded from such exploits, the Customs Service has been able to affect policy on its own. In 1984 it introduced a resolution to combat the smuggling done by airline crews by making air and sea carriers responsible for the security of their aircraft and ships; this initiative was adopted by

⁶⁶Emily S. Rosenberg, *Spreading the American Dream* (New York: 1982), p. 119; Joel Brinkley, "Diplomacy and Drugs," *New York Times*, March 26, 1986.

⁶⁷Joel Brinkley, "U.S. Sends Troops to Aid Bolivians in Cocaine Raids," *New York Times*, July 16, 1986.

⁶⁸Bradley Graham, "U.S. Army Joins Bolivian Drug Drive," *Washington Post*, July 16, 1986.

⁶⁹"U.S.-Backed Cocaine Raids Hit Pay Dirt in Peru," *Washington Times*, April 3, 1986.

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the United Nations Division of Narcotic Drugs and the Customs Cooperation Council.⁷⁰ Between 1984 and 1986 the Customs Service also negotiated agreements with five shipping companies and several aviation firms to have them cooperate and assist in eliminating smuggling. Under Customs' Carrier Initiative, the ship's captain and officers agree to search the vessel and turn over any drugs found to U.S. Customs. The Customs Service, for its part, promises to suggest better security measures. Mutual effort is seen as the key to control.⁷¹

The Customs Service was a vocal participant in the planning for a 1987 World Conference on Drugs, but perhaps nowhere did it enjoy a higher profile than in the fight against drug smuggling across the Mexican border with the United States. The southwestern border has long been difficult to patrol. As early as 1928 Federal narcotics squads, aided by the Customs and Border Patrols, complained of "insuperable" difficulties in stopping drugs at Laredo. With more than 24,000 visitor cards on file, hundreds of daily crossers, and ever-increasing numbers of cars and planes, agents could make only superficial checks. There were simply too few inspectors to search everyone and everything, and still follow up tips and leads on suspicious characters. But the smugglers themselves were only a small part of the problem at Laredo. Officers there were frustrated by their inability to reach the sources, the big dealers who brought the stuff as far as the border and then watched their messengers carry it over while they waited safely in Mexico. To remedy this, the United States wanted to station undercover agents south of the border.⁷²

Mexico's lack of cooperation exasperated customs officers and infuriated the head of the Federal Narcotics Control Board, Harry J. Anslinger. Contemptuous of Mexican officials who

⁷⁰ "United States Customs Service Accomplishments," (1987), p. 15.

⁷¹ Rita McWilliams, "Colombian Shipper Accepts Drug Searches," *Washington Times*, May 30, 1986; and Juliana King, "Grancolombiana Cited for Drug Fight," *Journal of Commerce*, May 30, 1986.

⁷² "Check On Narcotics Hampered at Border," *New York Times*, February 26, 1928.

promised to help but did little or nothing, Anslinger proposed unilateral U.S. border action. His calls went unanswered, but as the supply of drugs fording the Rio Grande grew during the 1950's and 1960's, his ideas sounded better and better. The highly publicized Operation Intercept put the thought into action during September and October 1969. A total of 2,000 Customs and Border Patrol agents intensively searched every vehicle and more than five million tourists. The operation backed up traffic for miles, drew the protests of local citizens and municipalities, and yielded no contraband. The program's notoriety did bring Mexico's reluctant agreement to some policing, however. This public concession satisfied Washington. The operation's name was changed from Intercept to Cooperation, and shortly thereafter it was quietly abandoned.⁷³

Customs Commissioner William von Raab reopened the border war in the spring of 1986. Pointing to the logarithmic increase in smuggling in the Southwest, von Raab called the region a "modern day horror story" and asked the Reagan administration to declare it a "crisis zone." He offered several reasons for the rise: Customs pressure on the Florida coast forced many traffickers to move their operations; more and more opium poppies and marijuana were in cultivation in Mexico; and Mexican agents were cooperating less and less with American efforts. But von Raab's most damning accusation was that Mexican officials were corrupt, even to the point of growing poppies on their own ranches. The commissioner's remarks were more than a nine days' wonder, not to mention an embarrassment to U.S.-Mexican relations, but they were not without result. That summer President Reagan announced a new \$250 million drug interdiction plan for the troubled border.⁷⁴

⁷³ Kinder and Walker, "Anslinger," p. 919; Edward J. Epstein, *Agency of Fear: Opiates and Political Power in America* (New York: 1977), pp. 82-85; Christopher R. Turner, "Drugs, Databanks and Dignity: Computerized Selection of Travelers for Intrusive Border Searches," *Boston University Law Review* (1976), p. 942, n. 21.

⁷⁴ Von Raab's remarks were covered extensively in the press. See, for example, Mary Thornton, "Rio Grande: Refuge Line For Drug Moving

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Von Raab's accusations had direct results for Customs as well. Despite federal budget cuts that had played havoc with agencies and institutions throughout the nation, the Customs Service allotment was raised to over \$1 billion and its legal authority was expanded. The commissioner interpreted these measures as an indication of public concern and "high regard for the job being performed by Customs as well as our central involvement in the burning issues of the day. . . . Concern over drugs is greater than at any time in our nation's history, and the Customs Service is in the front line against drugs." With his shocking remarks, von Raab had effectively refocused national attention on Customs' responsibility for drug enforcement. He used the Service's role in international affairs to restore and renew the authority and status of the agency he saw in danger of being lost in the federal narcotics machinery.⁷⁵

THE NEVER-ENDING STORY

In September 1986, President and Mrs. Reagan preempted prime-time television programming to announce a new \$1 billion offensive in the long-running war on drugs. In a speech laced with military metaphor, the Reagans asked the nation to pull together to defeat its common enemy. "Drugs are menacing our society," they warned. "They're threatening our values and undercutting our institutions. They're killing our children." ⁷⁶

Army," *Washington Post*, April 21, 1986; Dan Williams, "Meese Confers with Mexican Attorney General on Effort to Destroy Drug Crops," *Los Angeles Times*, April 15, 1986; Michael Hedges and Jennifer Spevacek, "\$250 Million Plan Set to Halt Drugs at Border," *Washington Times*, August 12, 1986; Joel Brinkley, "U.S. Officials Denouncing Mexico for Huge Rise in Drug Trafficking," *New York Times*, May 12, 1986; and Joel Brinkley, "Mexico? Did Someone Mention Mexico?" *New York Times*, October 28, 1986.

⁷⁵William von Raab, Memo to All Customs Employees Re New Resources and New Responsibilities, October 24, 1986, Archives of the U.S. Customs Service, Washington, D.C.

⁷⁶"Excerpts From Speech on Halting Drug Abuse," *New York Times*, September 15, 1986.

Counting on public fear and concern to support him, the President then unveiled his own, stiffer plan to win the war, and called for changes in privacy laws, relaxed rules of evidence, mandatory jail terms, and even the death penalty, to defeat the drug traffickers.⁷⁷

With great cheering and fanfare, the government thus launched its newest campaign. But by the new year, Reagan had already begun to cut back the scope and support of his brave new program.

For the Customs Service it was business as usual. During the 140 years it has been charged with drug enforcement, it has witnessed the rise and fall of public hysteria, endured bureaucratic reorganizations, and survived budgetary competition. Reagan's plan was but another chapter in the continuing and confusing saga of federal drug interdiction. The Customs Service would continue to do what it had done all along: pursue its mission to stop contraband narcotics at our borders.

⁷⁷ Gerald M. Boyd, "Reagan Proposes New Drug Laws and Orders Tests of U.S. Workers," *New York Times*, September 16, 1986; Niles Lathem, "Prez Warns: 'You Do Drugs, You Do Time'," *New York Post*, September 16, 1986.

Chapter X

CUSTOMS AND PORNOGRAPHY

American moral values have not been limited to restrictions on drink or drugs. The Puritan heritage that is a part of the American national character applies equally to sexual mores and has provided the nation with a history of legislation addressing that most personal of all human activities.

Customs has had the difficult task of enforcing federal laws about the importation and possession of obscene and pornographic materials since 1842. In so doing it has had to face many of the issues that have plagued alcohol and drug enforcement, most notably public cynicism about and resistance to government invasion of privacy and imposition of morality. It has had to share its authority with other federal agencies, particularly the U.S. Postal Service and the Justice Department. Its greatest handicap, however, has been having to work with vaguely framed legislation that never clearly defines pornography.

The Customs Service's first targets were erotic pictures; it had been screening books and pamphlets for titillating and treasonable matter since the end of the 19th century. Although the Supreme Court's increasingly liberal interpretation of what is and is not obscene blunted the force of the government's antipornography efforts after World War II, the Customs Service has recently renewed and expanded its mission in this field. Almost single-handedly it has taken on the pursuit and prosecution of child pornographers. As a result it has claimed a new

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responsibility as well as a greater role in federal criminal enforcement activities.

SERVING TWO MASTERS: PORNOGRAPHY ENFORCEMENT IN THE 19TH CENTURY

Obscenity has generally been defined as a sex issue. A 1711 Massachusetts statute may have been more concerned with antireligious materials than with explicitly sexual matters, but it did prohibit the "composing, writing, printing or publishing of any filthy, obscene or profane song [or] pamphlet." The first case to be prosecuted under this Puritan act resulted in the 1821 trial of the publisher of *Fanny Hill*. Vermont passed its first obscenity law that same year, and the 1820's and '30's saw other States follow suit, broadening the definition of obscenity to include any works "manifestly tending to the corruption of the morals of youth."¹ It should come as no surprise that this concern for the purity of youth paralleled the rise of temperance agitation and legislation. It was all part of the agenda of that reform-minded generation.

Pornography remained a matter of local jurisdiction until Congress, drawing on its right to regulate foreign commerce, passed the Tariff of 1942. Customs, as the enforcing agency, was given what seemed to be remarkably clear and straightforward duties. The law prohibited all indecent and obscene prints, paintings, lithographs, engravings, and transparencies from entering the United States. Customs officers were also to stop any publication advocating treason, insurrection, resistance to American law, or threats to another's life; any obscene or immoral publications or devices; any lottery tickets or advertisements for same; and any drug or instrument for causing

¹O. John Rogge, "Obscenity litigation," *American Jurisprudence Trials*, 10§28 (San Francisco: 1965), pp. 9-11; Shirley O'Brien, *Child Pornography* (Dubuque, Iowa: 1983), pp. 51-63.

unlawful abortion. The tariff's ban on contraceptives was not overturned by Congress until 1948.

In September 1842, Messrs. Poppy and L. Smith imported about \$700 worth of goods from Germany. Included in the shipment were nine snuff boxes, which alert customs officers immediately seized. Why? Because those snuff boxes "had false bottoms, on each of which was painted an indecent scene or figure, of so very obscene a character that they were not fit to be produced in court." In fact, only one was presented to the jury, "having first been defaced with ink to hide its obscenity." The two merchants were aware that the government could condemn their whole shipment. They argued that they had ordered the goods before the tariff was passed; that they were unaware of the paintings; and finally, that those articles were not the obscene paintings, prints, lithographs, engravings, or transparencies specified in the law, but simple decorations on snuff boxes. The jury, however, heeded the judge's instructions to consider the intent of the act and condemned the whole shipment.²

The condemnation confused both importers and customs officers. Were entire shipments, obscene or not, to become U.S. property because of a few tainted articles, or could merchants sue to reclaim legal goods? San Francisco collector Butler King was advised in 1851 to confiscate the entire package in which he found obscene materials and to destroy "the indecent prints, paintings, etc . . . forthwith, but to leave the rest of the ship's cargo alone." ³ Seven years later, when Boston and Charlestown Collector Arthur W. Austin seized a case of stereoscopic slides that one Walter P. Cottle had imported on the steamship *Arabia*, he condemned all of them, destroying the 59 obscene slides and selling off the other 1,924.⁴

²U.S. v. *Three Cases of Toys*, *The Federal Cases Comprising Cases Argued and Determined in the Circuit and District Courts of the United States*, vol. 28 (St. Paul: 1896), pp. 112–13, hereafter known as *Federal Cases*.

³William L. Hodge to Butler King, July 22, 1851, San Francisco Custom House Papers and Records (1850–1852), U.S. Treasury Department, MSS 0.138, Essex Institute Historical Collections, Salem, Massachusetts.

⁴U.S. v. *One Case Stereoscopic Slides*, *Federal Cases*, vol. 27, pp. 255–56.

The Tariff of 1842 had placed Customs at the intersection of the sometimes opposing demands of commerce and morality, and it was hard to service both at the same time. This is perhaps best illustrated by the case of Amar Young Brothers and Company. These Philadelphia haberdashers imported \$10,000 worth of linen handkerchiefs and shirt fronts from Liverpool in January 1864. Twelve of the 165 boxes of handkerchiefs, however, "were found to be embellished with pictures and fancy drawings, much too common in our shop windows, and known as 'Susanna at the Bath,' 'Diana and her Nymphs,' &C. &C." Customs inspectors seized the dozen boxes and brought them to the court for condemnation. A jury would decide whether these articles could indeed corrupt public morals (in which case the condemnation stood) or whether they were only "of a coarse and vulgar nature, but insignificant in themselves and harmless, however reprehensible it might be to deal in them" (in which case Young could offer them for sale).

The defense and prosecution arguments specifically addressed the causes of economics and ethics. Boxes and cartons similar to these, said the defense lawyers, "were imported and sold at this port by the first class mercantile firms as freely as were the linen-handkerchiefs they contained, which" they added, "were usually of the best quality of linen goods imported." Although the merchants were quite willing to agree that these "fancy boxes" were "rather indelicate for family use," they considered themselves justified in buying and selling them as they had done for years, simply because the "fancy prints" helped sales.

Assistant U.S. District Attorney Ethan Allen ripped right through the defense. After pointing out that if something were no good for family use, it was certainly no good for the community ("which was happily an aggregation of families"); and he reminded the jury that neither past practice nor high status "justify debauchery nor make indecency respectable." Quite the contrary. Allen warned that "if the importation of such articles had become so common, that men of probity and

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high social position openly advocated the traffic, this fact of itself was an argument why the salacious, lewd current, which was setting towards our shores from Europe, and increasing in volume, should be stopped forthwith and forever." After a half-hour of deliberation, the jury decided for the government.⁵

But the tariff did not keep America free of pornography. In fact, as all good tariffs do, it stimulated the development of a healthy native industry. By the Civil War, domestic supply was equal to soldiers' demands for lewd books and pictures.

Most of these reached the army camps through the U.S. mail. In an attempt to stop the distribution of pornographic materials, Congress in 1865 prohibited obscene matter from the mails. It failed, however, to give the Post Office any real enforcement power. Not until Anthony Comstock invited the Young Men's Christian Association to form the Committee for the Suppression of Vice in 1868 did Congress begin to feel the need to do anything more. But five years of Comstock's lobbying produced a stiffer law, and Comstock himself was named to enforce it. Under his enthusiastic supervision, the Post Office seized and destroyed "134,000 pounds of books, 19,000 pictures, 5,000 packs of playing cards and 60,000 rubber articles" between 1873 and 1875, while the courts moved aggressively against publishers of pornographic literature.⁶

The Post Office often duplicated Customs' efforts. As early as 1829 the Treasury Department had noted the possibility of smuggling contraband and dutiable items through the mails. It also recognized that "the Post-Office Laws contain some provisions in relation to this subject" and that "care should be taken . . . to avoid collision" between the two authorities. A Treasury circular from that year ruled that a customs officer would examine letter bags before they left the ship and remove any suspicious envelopes or packages before the bags were

⁵U.S. v. *Amar Young Brothers and Company*, *Federal Cases*, vol. 1, p. 1024.

⁶O'Brien, *Child Pornography*, p. 53.

turned over to the Post Office. The items that were withheld would remain at the customhouse until the owner or consignee came to collect, and open, them in the collector's presence. Customs thus had the authority to search and seize mail without a warrant as part of its mission to protect both the revenue and the morality of the United States.⁷

Customs was in charge of vetting foreign mail; the Post Office domestic. As both agencies obviously handled printed matter and merchandise from abroad, the limits of each agency's jurisdiction were not always clear-cut. Certainly the public was sometimes confused. In 1868, Ellen Mordecai of Mobile, Alabama, wrote to the Postmaster General asking that certain books she was importing from Ireland for presentation to intimate friends "be transmitted to her address unopened by customs officers." She added that she hoped her request had reached the proper authority.⁸

By the 1890's Customs and the Post Office had begun to work out a *modus operandi* based on mutual reinforcement instead of competition. They had a system of controlled deliveries in practice before the turn of the century. Under this policy a postal official held a suspicious letter or package from abroad at the post office, and asked a customs officer to be present when the addressee appeared to claim and open it. Should the package contain "lottery or obscene matter" it was turned over to the postmaster for disposal under postal laws. Within 10 years customs officials regularly detailed subordinates for duty at major post offices to aid in the inspection of the mail for revenue fraud.⁹

⁷Treasury Department, Circular Instructions to Collectors of Customs, August 10, 1829, October 9, 1852, March 12, 1888, and July 21, 1891, Archives of the U.S. Customs Service, Washington, D.C.

⁸Letter # 4122, Box August 1820-January 1878, Letters Received from the Post Office Department, 1820-1901, Entry # 150, Treasury Department Records, Record Group 56, National Archives, Washington, D.C.

⁹Treasury Department Circulars 136 (November 26, 1873), 178 (October 25, 1897), 64 (May 4, 1900), 17 (March 1, 1907), Archives of the U.S. Customs Service, Washington, D.C.

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Customs and the Post Office enforced 19th century mores well into the 20th century. Their cooperation even excluded Tolstoy's "Kreutzer Sonata"; *The Arabian Nights*; printed reproductions of Michelangelo's paintings; and even such best-sellers as *Forever Amber*, *For Whom the Bell Tolls*, and *Tobacco Road*.¹⁰ Each generation, however, redefines obscenity for itself. The 20th century has seen a progressively more liberal interpretation of pornography legislation. The Customs Service, charged with upholding that legislation, often finds itself forced to defend its actions to a nation expecting consistent enforcement of the very laws it is constantly testing.

THE PROHIBITION OF PORNOGRAPHY: ENFORCEMENT BEFORE WORLD WAR II

The Progressive Era that gave the United States national Prohibition was equally zealous about a second kind of prohibition. During the first decades of the 20th century, reformers and crusaders waged war against anything related to sex. Following Comstock's flag, 30 states passed their own obscenity laws. The early decades of the 20th century saw rising citizen opposition to obscenity. Voltaire, Rabelais, and Boccaccio were eyed with the same suspicion as the authors whose lurid stories filled the pages of the *Police Gazette*.

Nervous publishers even printed certain parts of the Bible separately so as not to offend good taste. There was no official map showing the way through this morass either. At least one observer noted that "the ban indices of the two great federal agencies—Post Office and Customs—seldom agreed."¹¹

Customs confidently seized and destroyed obscene or immoral articles imported through regular channels throughout the 1920's. During the first quarter of 1926, for example, Boston

¹⁰Rogge, "Obscenity Litigation," pp. 100-05.

¹¹Morris L. Ernst, "Sex Wins in America," *The Nation*, vol. 135, no. 3507 (August 10, 1932), p. 123.

officers routinely collected several sorts of contraceptive devices, obscene photographs and postcards, 300 lottery tickets, even a copy of a publication called *Science and Health*, with no challenge from either the importer or the public.¹² The courts usually vindicated Customs' actions in those few cases that were appealed. A 1928 Treasury circular applauded a federal judge's support of the Minneapolis collector who excluded such books as *The Law Concerning Draped Virginity*, *The Abuses of the Genital Sense*, *The Vice of Women*, and *Ulysses*. "Only a casual glance through the books in evidence is sufficient to satisfy us that they are filled with obscenity of the rottenest and vilest character," concurred the Treasury Department. "If merchandise of this character is to be admitted into the United States, then section 305 of the tariff act of 1922 [the section that deals with obscene and immoral articles] should be erased from the statute books."¹³

The following year the government agreed with the Boston collector who banned Balzac's *Ten Droll Tales* and Boccaccio's *Decameron* because their "obscenity is accented by pictorial illustration of like character."¹⁴ The Treasury also approved the exclusion of *Enduring Passion* by Marie Stopes, the Margaret Sanger of Britain. This guide for married lovers was "offensive to the innate modesty of the average man and woman. . . . One is amazed and shocked at the boldness, yet withal subtle suavity, of its language and expression." This circular served also as a convenient pulpit from which to remind customs personnel that "familiarity with obscenity tends to blunt the sensibilities, deprave good taste, and pervert the

¹²Thomas Finnegan to James L. Dunn, April 26, 1926, Customs, Immigration, and Navigation Fines and Letters, vol. 19, Port of Boston Custom House, Bureau of Customs Papers, Record Group 36, Federal Records Center, National Archives, Waltham, Massachusetts; *U.S. v. One Package*, *Federal Reporter*, *Second Series*, vol. 86 (St. Paul: 1937), p. 737.

¹³Treasury Decision 42907, *Treasury Decisions*, vol. 54 (Washington, D.C.: 1929), p. 121.

¹⁴Treasury Decisions 10122, 9470, *Treasury Decisions*, vol. 56 (Washington, D.C., 1930), pp. 891, 775.

judgement.”¹⁵ But as public opposition to alcohol prohibition grew, so did protests against censorship. By the start of the new decade, Customs found itself on the defensive.

The debates over the provisions of the 1930 Smoot-Hawley Tariff publicized the extent of Customs’ censorial powers. Senator Smoot proposed expanding the definitions of treasonable and threatening literature in section 305 to embrace Communist and socialist sentiments. He also wanted to move the final decision about the obscenity of a particular import from a customs to a federal district court. Smoot, who considered the poems of Robert Burns “bestly,” appealed to his colleagues “to throw the arms of protection around the army of boys and girls who later must constitute the citizenry of this country.”¹⁶ The Senate obliged.

Not everyone agreed. The Civil Liberties Union warned that the Smoot amendment would end the existing right of an importer to appeal a customs decision in district court; a Harvard law professor worried that prohibiting certain kinds of “revolutionary” literature would also exclude many important social, political, and economic treatises the radicalism of which, if any, appeared in only a small section of the work.”¹⁷ And New Mexico’s Senator Cutting, cautioning that a “literary bootlegging trade” would rise to fill the vacuum left by wider censorship, urged eliminating books from review altogether. His reasons were practical as well as ideological. What, Cutting asked, if there were other customs collectors like the gentleman at Baltimore who confiscated a book by Rabelais without ever having opened it and who did not know whether Chaucer, Fielding, and Smollett were still alive?¹⁸

¹⁵Treasury Decision 43603, in *ibid.*, pp. 273, 277.

¹⁶“Senators Debate Book Censorship,” *New York Times*, March 18, 1930, p. 5.

¹⁷“Fights Red Writings Ban,” *New York Times*, September 15, 1929, p. 21; “Says Tariff Sets Up Literary Censorship,” in *ibid.*, September 28, 1929, p. 4.

¹⁸“Court Censorship on Foreign Books Adopted by Senate,” in *ibid.*, March 19, 1930, p. 1.

Ignorance was not the only charge hurled at customs officers. One importer complained that agents had seized a rare, signed edition of a 20-year-old book and marked the objectionable passages with a pencil, much the way "some prudish person" might clothe Botticelli's *Venus*, and this despite the fact that reprints of this book were readily available at the nearest department store.¹⁹

A serious accusation appeared in an editorial in *The Nation* in 1933: that customs collectors were bending the rules so that their decisions would not be tested in court. Evidently officers had allowed a copy of George Moore's *A Story-Teller's Holiday*, long on the proscribed list, to enter the country because they knew that the National Council for Freedom from Censorship planned to challenge the ban. The Customs Service freely admitted that should the importer be willing to forget about taking the case to court, the book would be prohibited again. "The really significant fact," the editor pointed out in recounting this story, "is simply the willingness of the Customs authorities to play fast and loose with their own rules. . . . One hardly expects the representatives of the law to be concerned only with what they can get away with."²⁰

Strange problems plagued a service asked to enforce an unclear law. For example, one cold day in February 1933 inspectors in New York City opened a package addressed to a Lexington Avenue art gallery and stared at the contents in shocked disbelief. Immediately seizing the shipment, they promptly sent the gallery a form letter requesting permission to destroy the offensive merchandise. The gallery did nothing, trusting that someone at the customhouse would come to his or her senses. After four days, someone did. Assistant Solicitor George N. Brewer looked into the box, saw the "ten pamphlets of rotogravure reproductions" of the Sistine Chapel frescoes,

¹⁹ "Says Customs Men Defaced Rare Book," in *ibid.*, May 13, 1930, p. 16.

²⁰ "Purity at the Port," *The Nation*, vol. 136, no. 3529 (February 22, 1933), p. 194.

and dispatched them uptown at once. A tongue-in-cheek editorial in the next day's *New York Times* suggested that Michelangelo might indeed be barred from the United States, not because the nude figures in his paintings offend public decency, but because he is a foreign artist dumping pictures here when thousands of American artists are out of work.²¹

Somewhat less drastic were Customs' actions in what was perhaps its most famous battle of the time: the exclusion of the novel *Ulysses* by James Joyce. Barred from these shores since before its official publication in Paris in 1922, the book was nevertheless a popular souvenir of a European holiday that returning tourists rarely managed to take off the pier with them. Literati in all English-speaking countries, forced to read the book in bootleg reprints, hailed it as a classic. In 1933, Bennett Cerf, an editor at Random House and the Modern Library, decided that the time was ripe for an American edition; so many underground copies had been circulated that the price had slipped from \$50 to \$25 a copy.²² Cerf applied to Customs to have one copy admitted legally under the non-commercial-use rule; this loophole, intended to benefit serious bibliophiles like J.P. Morgan, permitted entry of single copies of any book as long as they were for private use.

Customs saw through the ruse and seized the book when it arrived in New York that June. In July the matter went to district court. In November, Judge John M. Woolsey was still reading it, "very puzzled" about its obscenity. He gave it to two literary friends to read also, and neither of them found it pornographic either. Although Woolsey admitted that Leopold Bloom's adventures might be "a strong draught to ask some sensitive, normal person to take," he ruled that Joyce had not written "dirt for

²¹ "Customs Censors Bar Vatican Art," *New York Times*, February 15, 1933, p. 19; Editorial, in *ibid.*, February 16, 1933, p. 18.

²² Parts of *Ulysses* had been printed in *The Little Review* in 1918, but the Post Office had been in charge of quickly collecting and making a bonfire of the mailed copies of that issue. See "Ban Upon 'Ulysses' To Be Fought Again," *New York Times*, June 24, 1933, p. 14.

dirt's sake." On December 6, 1933, the day after the 18th Amendment was repealed, *Ulysses* finally cleared customs, and Cerf prepared for its January 1934 publication.²³

The editors of the *Times*, aware of the parallel course of prohibition and pornography legislation, mused that Joyce supporters will "probably be chagrined . . . to find that the public has no great interest in this long-banned novel. While under exclusion, it was furtively read with delight; now that it can be freely bought and sold, there will be less appetite for it, one imagines."²⁴

By 1934 the Treasury Department had come to understand the depth of public opposition to its decisions. To protect itself, it engaged a "literary expert attached to the Collector of Customs" to read and review the morality of books entering the United States. Thirty-year-old Baltimore lawyer Huntington Cairns was the first to bear the unusual title. A well-read, well-respected advocate, and a published author himself, Cairns had often challenged customs seizures in court. Now, the Treasury hoped, he would forestall those challenges. While rejoicing that the job had gone to "a gentleman of cultivated and refined taste" instead of "some prominent Nice-Nellie or to some Board of Snoopers appointed by the DAR and the Federation of Women's Clubs," some critics regretted that such a position was necessary at all.²⁵

CHANGING CURRENTS: CUSTOMS AND THE DEFINITION OF PORNOGRAPHY

World War II temporarily shifted Customs' most rigorous

²³ "Test Set for 'Ulysses'," *New York Times*, July 12, 1933, p. 15; "Court Undecided on 'Ulysses' Ban," in *ibid.*, November 26, 1933, p. 16; and "Judge Woolsey on 'Ulysses'," *Saturday Review of Literature*, vol. 10 (December 16, 1933), p. 356.

²⁴ Editorial, *New York Times*, December 8, 1933, p. 24.

²⁵ "New Book 'Censor' Liberal in Views," in *ibid.*, October 21, 1934; "An Ellis Island for Books," *The Nation*, vol. 139, no. 3617 (October 31, 1934), p. 496.

scrutiny to another type of interdicted material. While government censors blue-penciled V-mail, customs inspectors were checking the books, papers, and pamphlets from abroad for treasonable or seditious statements. Here, too, the proper interpretation of questionable material could be a problem for collectors. In 1943, for example, New York City Collector Harry M. Durning detained several books from Britain "for the duration of the war." These were political and religious books, not erotic ones; they bore titles such as *The Free Thinker* and *The Papacy and Politics Today*. Durning and his staff obviously felt it was far better to be safe than sorry. If these works were not downright treasonable, they were at least inimical to the war effort. The district court judge disagreed. Releasing the books after a six month detainment, he noted that it was "difficult to perceive what possible relation this material can have to the conduct of the war." ²⁶

The Supreme Court, however, was still laboring to find a workable definition of pornography. In 1942 it excluded obscene material from protection under the First Amendment. But what exactly was to be excluded? blasphemy? profanity? war? or the traditional expressions of sexual violence? This question, which has occupied courts and commissions up to the present day, has often been forced by test cases provided by the Customs Service.

When the Institute for Sex Research, Inc., at Indiana University imported several explicit photographs for one of its projects, the Customs Service questioned whether the pictures really were for scientific research and condemned them. A court overturned this ruling. Comparing the pictures to a potentially harmful bacterium that could be carefully studied in order to benefit society, the judge placed the purpose of the photos over their content and vowed that "the work of serious scholars need find no impediment." ²⁷ Customs' confiscation of Dorothy

²⁶ *Truth Seeker Co., Inc. v. Durning*, *Federal Reporter, Second Series*, vol. 147 (St. Paul, 1945), p. 55.

²⁷ *U.S. v. 31 Photographs*, *Federal Supplement*, vol. 156 (St. Paul, 1958), pp. 357-58.

Upham's personal copy of Henry Miller's *Tropic of Cancer* when she returned to New York from her Greek holiday in 1960 gave the American Civil Liberties Union its day to challenge the constitutionality of obscenity laws in court.²⁸ And the nudist magazines detained by a Baltimore collector in 1967 forced consideration of whether the presence or absence of clothing defined obscenity.²⁹

Other cases challenged the government's authority to define obscenity, determine a book's morality. Despite its sexual subject matter, a federal judge ruled in 1959 that *Lady Chatterly's Lover* was not obscene.³⁰ *The Nation* had worried in 1934 that "some obliging office boy" made the decisions for Customs, and at least one lawyer has noted that an initial reviewer with "low standards" could release a flood of pornography into the country.³¹ But other judges have been willing to accept Customs' opinions. When the importer of a Swedish film titled "491" disputed the actions of the agents who detained it, the district judge pointed out that "customs officials who had years of experience in screening obscene motion pictures were in a position to give expert opinion as to whether the picture was obscene." ³²

This concern with credentials is really a symptom of the confusion about the meaning of the law that the Customs Service must enforce. The Supreme Court decisions that finally declared Leopold and Molly Bloom, *Lady Chatterly*, and Fanny Hill fit guests for American living rooms represented a relaxation

²⁸ *Upham v. Dill*, in *ibid.*, vol. 195, p. 5.

²⁹ *U.S. v. Reliable Sales Co.*, *Federal Reporter, Second Series*, vol. 376 (St. Paul, 1967), p. 808.

³⁰ *Grove Press Inc. v. Christenberry*, *Federal Reporter, Second Series*, vol. 276, p. 439.

³¹ "An Ellis Island for Books," p. 496; Edward T. Byrne, "Government Seizures of Imported Obscene Matter: Section 305 of the Tariff Act of 1930 and Recent Supreme Court Obscenity Decisions," *Columbia Journal of Transnational Law*, vol. 13, no. 1 (1974), p. 116n.

³² *U.S. v. One Carton Positive Motion Picture Film Entitled "491," Federal Supplement*, vol. 248, p. 373.

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of the nation's moral standards but came no closer to defining pornography.

The more relaxed attitude was only temporary anyway. In 1967, Congress decided that obscenity was a major issue facing the nation and appointed an 18-member Commission on Obscenity and Pornography. This commission was given a four-part mission: (1) to analyze pornography control laws and come up with a usable definition of obscenity; (2) to assess the extent of the pornography trade in the country; (3) to study pornography's effects on behavior; and (4) to recommend legislation to regulate this trade.

In September 1970 the commission presented its final report. Concluding that there was no causal link between obscenity and either moral degeneracy or criminal behavior, it called for the repeal of all antipornography laws. President Nixon rejected the report. Repeating the traditional equation of obscenity with the destruction of the nation, he warned that a tolerance of pornography "would contribute to an atmosphere condoning anarchy in every field—and would increase the threat to our social order as well as to our moral principles. . . . So long as I am in the White House, there will be no relaxation of the national effort to control and eliminate smut from our national life."³³

In 1973 the Supreme Court proposed a new standard for determining what was and was not obscene, and then dumped the responsibility for applying those criteria on the States. In his opinion re *Miller v. California*, Chief Justice Warren Burger described pornography as works of no serious literary, scientific, political, or artistic value which depict sexual conduct in an offensive way. He added, however, that prevailing local standards should apply. Thus *Deep Throat* could be banned in Birmingham while playing to capacity audiences in New York City, and customs officers could detain *I Am Curious Yellow* in one port but release

³³ *Weekly Compilation of Presidential Documents* 36 (November 2, 1970), pp. 1454–55.

it to the theater at another. With no national standards in effect, Customs was being asked to do the impossible.

The task of coming up with some definite obscenity tests was not taken up again until May 1985, when U.S. Attorney General Edwin Meese III named an 11-member commission to study the nature and effects of pornography on a national life already severely strained by drug abuse, uncertain economics, and foreign terrorism. During a year of meetings, panelists reviewed 2,325 magazines, 725 books, and 2,370 films and then released their findings to the public. Reversing the 1970 commission findings, the commissioners wrote that their experience "strongly supports the hypothesis that substantial exposure to sexually violent materials . . . bears a causal relationship to antisocial acts of sexual violence. . . . Substantial exposure to material of this variety is likely to increase the extent to which those exposed will view rape or other forms of sexual violence as less serious than they otherwise would have."³⁴

But there was division in the ranks. Not all panelists agreed there was a link between the multi-billion-dollar pornography industry and sex crimes in the United States. Two panelists, Ellen Levine and Judith V. Becker, questioned both the commission's methods and its faith in imprecise social science research techniques. They charged that what was purported to be a scientific study of the relationship between pornography and crime was really a rushed, incomplete, and biased investigation.³⁵ Criticism came from without as well. The American Civil Liberties Union, noting that the commission's report, with its explicit descriptions of the materials it reviewed, was sure to be a "pornographic bestseller," argued that the results belied the conclusions. The panel obviously believed, observed ACLU legislative counsel

³⁴ "ACLU Challenges Pornography Panel's Secrecy," *Washington Post*, March 4, 1986; "Detailed Descriptions in Pornography Report," *New York Times*, May 27, 1986; and John McCaslin, "Panel Report Links Violence to Hard-Core Pornography," *Washington Times*, July 10, 1986.

³⁵ Philip Shenon, "Two on U.S. Commission Dissent on a Pornography Link to Violence," *New York Times*, May 19, 1986.

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Barry Lynn, "if the average American sees it, then he's headed down the road to criminality or deviance. They always feel it doesn't bother them, but it must bother someone else."³⁶

Judges and panelists may argue whether it is harmful or benign, but no one can say what it is or what to do about it. In fact, the question of pornography is so tied up with other American anxieties that court decisions can only affirm that "obscenity is not a technical term of the law and is not susceptible of exact definition."³⁷ The barrage of court decisions over the past 50 years has effectively precluded Customs from excluding all but the most clear cut pornography. These are limited to materials involving sadomasochism, bestiality, excretory functions, or children.

NEW HORIZONS: CUSTOMS AND THE FIGHT AGAINST CHILD PORNOGRAPHY

There is one issue in the pornography debate, however, about which there is no confusion and one to which the Customs Service has brought its accumulated authority, experience, and interdepartmental contacts. That issue is child pornography.

Efforts to stem the production and distribution of child pornography date back to the 1974 Federal Child Abuse Prevention and Treatment Act. This law defined sexual abuse as "the obscene or pornographic photographing, filming or depiction of children for commercial purposes, or the rape, molestation, incest, prostitution or other such forms of sexual exploitation of

³⁶ Philip Shenon, "Sturm und Drang und Pornography," *New York Times*, April 15, 1986; and "Has the Porno Panel Written a Bestseller?" *Washington Times*, May 27, 1986.

³⁷ "Meese Proposal Seeks Stricter Legislation Against Pornography," *Wall Street Journal*, October 23, 1986; Philip Shenon, "Meese, in a Move on Pornography, Creates Special Prosecution Team," *New York Times*, October 23, 1986; Edwin McDowell, "Pornographic Material: Should It Be Outlawed?" in *ibid.*, October 16, 1986; and Arthur I. Demcy, *How to Cope With United States Customs* (Dobbs Ferry, New York: 1976), p. 121.

children under circumstances which indicate that the child's health or welfare is harmed or threatened thereby." ³⁸ The Protection of Children Against Sexual Exploitation Act of 1977 sought to eradicate child pornography by making the essential links in its chain of production, distribution, and sale matters of criminal intent. Under this act, anyone creating such materials for interstate or foreign commerce—including consenting or aware parents—is liable to fines and imprisonment. The law also made it illegal to receive books, magazines, or films of this sort.³⁹

In 1984, having found that child pornography had developed into a multimillion-dollar, highly organized national industry that took advantage of thousands of runaway and homeless young people whose "physiological, emotional, and mental health" are endangered by it, Congress passed the Child Protection Act. This law raised the age of majority from 16 to 18; dropped the requirement that the material had to be intended for sale to be contraband; and, most important, made the suggestion (rather than the reality) of sexual activity enough for a violation. Receiving these publications could now cost the consumer a \$100,000 fine and 10 years in prison. The new act also strengthened Customs' authority to enforce its provisions, increasing agents' power to confiscate suspected pornography or its proceeds and to turn violators over to the Justice Department for prosecution.⁴⁰

It was welcome legislation for the Customs Service. In 1983, clergy attending a meeting at the White House persuaded President Reagan to ask Customs Commissioner William von Raab to look into the matter. Investigations of pornography networks in general led agents and inspectors to the specialized

³⁸ 42 U.S.C. 5101.

³⁹ 18 U.S.C. 2251; Al Kamen, "Pornography Case Appeal Is Rejected," *Washington Post*, April 22, 1986.

⁴⁰ P.L. 98-292, Child Protection Act of 1984, May 21, 1984; Rita McWilliams, "Senate Subcommittee Told U.S. Top Child-Porn Market," *Washington Times*, November 30, 1984.

child pornography trade almost by chance. Once the size of the problem became apparent, many more agents volunteered for the project, many of them working on their own time.⁴¹ In October 1985 their efforts were coordinated under the Child Pornography and Protection Unit in the Customs Service.

The unit is still discovering the size of the market. The United States appears to be the world's largest consumer of child pornography; by late 1986 the unit had identified more than 20,000 Americans who had ordered magazines like *Nympho Lover*, *Joy Boy*, and *Lolita*. It also began to link these readers with other crimes against children. The Customs Service's War on Pornography, begun as a crusade against a particularly odious form of obscenity, has become a wide-ranging federal law enforcement program against sexual exploitation of children in general.

The Child Pornography and Protection Unit relies heavily on cooperation with other federal agencies, primarily the FBI and the Postal Service, as well as local police and district attorneys. Many seizures are made in Customs' regular venues; pornography is smuggled in among legitimate merchandise by air, sea, or truck, or tucked under the dirty laundry and guidebooks in a traveler's suitcase.

Most pornography enters the country through the mails, however. Americans receive more than 921 million pieces of international mail each year, some 200 million of them from nations like the Netherlands, Sweden, Denmark, and Thailand, which Customs has tagged as major sources of child pornography. Mail from these countries is reviewed, and any parcels and envelopes suspected of containing contraband are opened and examined. Their suspicions are confirmed in about one of 40 cases. After analyzing the content and source of the material they find, agents make controlled deliveries to the addressee.

⁴¹ Mary Thornton, "Customs Service Leads War on Child Pornography," *Washington Post*, August 9, 1986; "Commissioner's Round Table: Pornography," *Customs Today*, vol. 20; no. 4 (Winter 1986), p. 7.

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Once the mail has been accepted, agents obtain warrants to search the premises for the confirmation of criminal activity.

Often they find much more. "Executing search warrants at the residences of importers of child pornography, special agents frequently find photographic and written evidence which confirms that these individuals have a long and detailed history of acting out their perverse fantasies by preying on or molesting children in their community." Customs agents participate in task forces, forming partnerships with federal, state, and local police agencies.

One controlled delivery involving federal and local cooperation, for example, unearthed more than 150 pounds of child pornography at the home of a fifth-grade teacher. The stash included 2,760 photographs of boys between nine and 11 years of age, 32 videos depicting child pornography, an extensive collection of letters to other boy-lovers, and records of contacts with young boys. While searching the home of Atlanta psychiatrist Charles Markham Berry after a controlled delivery of European child pornography, agents and police found secret drawers stuffed with photographs and videotapes of preadolescent boys engaging in sex with each other as well as with Berry. They also found a photo studio complete with floodlights and stuffed animals, a computer file with a list of names and descriptions of other boys Berry had known and a manuscript chronicling his adventures. Agents also frequently find mailing lists of other pedophiles, lists that are likely to contain the names of teachers, doctors, lawyers, clergymen, camp counselors, and day care workers who exchange children and pornography through an underground network.⁴²

Controlled deliveries and search warrants often lead to cases for the U.S. or local attorneys to prosecute under federal or state

⁴²Oral interview with Donald J. Grattan, Director, Child Pornography and Protection Unit, U.S. Customs Service, February 23, 1989; Thornton, *Washington Post*, August 9, 1986; Regional Commissioner, Chicago, Weekly Management Brief, File MAN-1-02-PA CLM, September 25, 1986, Archives of the U.S. Customs Service, Washington, D.C.

law.⁴³ The choice of jurisdiction depends on which law gives customs the stronger case and which agencies are most cooperative. A case in Oklahoma, for example, was tried under the state possession law instead of the federal receipt law.⁴⁴

Cooperation is not always forthcoming. Local police may feel their territory is being invaded by T-men. Even U.S. Attorneys in different parts of the country have different responses to Customs' antipornography efforts. Justice Department representatives in the Southern states may support the Customs Service action with warrants, investigations, and prosecutions on the basis of one obscene magazine, whereas attorneys in large cities put less emphasis on pornography prosecutions.

To counteract this discrepancy Customs has begun to collect hard data with which to support its cases. A master list of seizures, search warrants, and offenders, along with a library of confiscated materials, makes it possible for agents asking for warrants to convince the judge about what they expect to find. The goal is to equalize enforcement across the country.⁴⁵

Customs efforts to stop child pornography are not limited to American soil. Agents in Europe and Asia often negotiate with foreign customs and other foreign government officials. They also work with local police in other countries to stop pornography at its source by identifying and having arrested major producers and distributors. Commissioner von Raab, for example, depending on the international collegiality of customs officers, gave Swedish customs officials the addresses of several pornography factories, which the Swedish agents were able to close; he has also lobbied to persuade foreign governments to tighten their pornography laws.⁴⁶

⁴³ Regional Commissioner, New Orleans, Weekly Management Brief, File MAN-1-V: RC LAM, October 2, 1986, Archives of the U.S. Customs Service, Washington, D.C.

⁴⁴ Regional Commissioner, Southwest, Weekly Management Brief, File MAN-1-04-RC: LCS, August 18-22, 1986, in *ibid*.

⁴⁵ *Customs Today*, vol. 20; no. 4, pp. 13-15.

⁴⁶ *Ibid.*, pp. 11, 13; William von Raab, interview with author, March 13, 1986.

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Customs agents sometimes go undercover to capture their quarry. In January 1985, customs agents ordered photo sets from a supplier in Bangkok as part of a continuing program of keeping up with what's new in packaging, mailing, and contents. This particular distributor wrote long, chatty letters to his customers, and the practice gave the agents an idea for gaining entry to his operation. Posing as avid collectors, agents Ray Martinez and Jack O'Malley offered to "broker his product commercially and domestically." The Thai merchant, Mani Tamaree, was intrigued enough by the offer to invite them to Bangkok, promising to provide them with whatever children or drugs they wanted. He also sent a sample of his merchandise. When the agents realized that these photographs were similar to those in the European *Lolita* magazines—even down to the same striped sheets on the beds—they asked Tom Winker, the U.S. Customs attaché in Bangkok, to approach Thai authorities about making an arrest.

Martinez and O'Malley traveled to Thailand in August 1985; met with Mani; and, when he once again offered them the pictures, arrested him. His files have since led authorities to clients all over the world and have provided the evidence for four arrests in the United States. One of his American clients, in fact, published Mani's work in a magazine called *The Lewis Carroll Collector's Guild*.⁴⁷

Domestic agents work undercover, too, of course. In one case a customs man posed as a pornography distributor. By consenting to undergo wiretap surveillance, he was able to record the defendant's statements of intent to sell pornographic publications he obtained in Europe.⁴⁸

How effective have the Customs efforts been? Some agents report that the European market is drying up and that new laws have taken *Lolita* out of the porn shops and have forced

⁴⁷ *Customs Today*, vol. 20; no. 4, p. 14; Joseph de Rienzo, "Child Sex Slaves: A Booming Trade," *The Nation*, August 15, 1986.

⁴⁸ *U.S. v. Adams, Shingaki et al.*, *Federal Reporter, Second Series*, vol. 694 (St. Paul: 1983), pp. 200-03.

distributors to use false addresses to confuse investigators. Less “junk” now crosses our borders, and customs investigations have put a lot of child molesters behind bars. But at the same time, the North American Man Boy Love Association newsletter regularly advises its readers about how to smuggle child pornography past customs inspectors. The service remains committed to the program nonetheless. Officers are often so personally dedicated to it that few can put in more than three years on this assignment without suffering mental distress and burnout. Both Commissioner von Raab and former Attorney General Meese have expressed great satisfaction with Customs’ successes and expect them to continue even after a new administration takes over in Washington.⁴⁹

The offensive against child pornography in part represents Customs’ efforts to reclaim some of the autonomy that has been wrested from it during the 20th century as well as the agency’s ability to apply its historical border authority to a new menace. Federal organization and reorganization during Prohibition and, more recently, the war on drugs, has limited Customs’ authority and initiative in seizing contraband and forced the agency to share the limelight and its resources with other agencies. The child pornography issue is an elegant illustration of what has been called the theory of Bureaucratic Adaptability, which posits that organizations change their jobs—redefine their missions, that is—according to perceived threats to their integrity.⁵⁰ In this case, the Customs Service, its drug enforcement duties subsumed under the Drug Enforcement Administration and its obscenity crusade shared with the Postal Service and the Justice Department, has identified a problem to which other agencies have paid scant attention and claimed it for its own.

This work has proved to be important. In contrast to other kinds of pornography, it is impossible to defend the sexual

⁴⁹*Customs Today*, vol. 20; no. 4, passim; *Washington Post*, August 9, 1986.

⁵⁰For a fuller discussion of this subject, see Allan R. Millett, *Semper Fidelis* (New York: Free Press, 1982).

exploitation of children, and so Customs can count on much support from the President, the press, and the public. Customs officers maintain that there is a causal link between child pornography and criminal behavior although the jury is still out on this question.⁵¹ But organized sexual abuse of children does create a grim market for kidnapped youngsters. The Customs Service has been able to take advantage of the tenor of the times and has parlayed a general concern with the morals and safety of American youth into a program the Commissioner expects to continue into the indefinite future.⁵² Emphasizing the moral component of an old trade regulation has thus returned to the Customs Service some of the centrality, autonomy, and status it enjoyed in the early days of the nation.

⁵¹ Jonathan Miller, "Censorship and the Limits of Permission," in *The Influence of Pornography on Behavior*, ed. by Maurice Yaffé and Edward C. Nelson (New York: 1982), p. 36.

⁵² *Customs Today*, vol. 20; no. 4, p. 35.

Chapter XI

CUSTOMS IN WAR AND PEACE

During the course of this century the Customs Service has been called on to enforce federal laws regarding alcohol, drugs, and pornography while pursuing its mission to protect the nation's revenue. The changing nature of war and the inexorable march of technology have also defined the agency's role in modern times. Customs agents and officers have guarded the nation's ports against enemy attack and ensured the primacy of its defense systems. They have looked after its economy by foiling attempts to steal American technology and know-how. And at the same time their mission, reflecting America's place in the global community, has expanded to encompass a vital role in enforcing foreign policy.

CUSTOMS IN WORLD WAR I

On August 1, 1914, the sabers that had been rattling all over Europe for years were finally drawn. As nation after nation readied itself for battle, Americans watched in horror and nervously assured one another that the physical isolation of the United States and its traditional aversion to entangling alliances would keep them spectators, not participants, in this war. The country could not, however, simply ignore the quarrel. As soon

as the first guns had boomed across Belgium, President Wilson and his Cabinet readied a proclamation of neutrality which they hoped would meet the administrative and ethical ramifications of not getting involved. While virtually every federal department, agency, and bureau was called on to help the country keep its distance, it fell to the Treasury Department to enforce, and to the Customs Service to administer, the provisions of the Neutrality Act of August 5, 1914.

The act determined the direction that Customs would take throughout the war. The day after its publication, port officers around the country turned their staffs into a valuable "shore and border auxiliary" to conventional military forces. From then on, customs agents thoroughly searched the documents and cargo of all merchant vessels in their districts, demanding full and final manifests from all foreign-bound ships before granting any clearances. Officers also reported the movements of all ships of the warring nations and wired the Treasury Department when they noticed any of them attempting to leave port without a regular clearance or to change status from merchantman to armed vessel. Customs men locked the radio equipment of belligerent ships entering port and unlocked it upon departure. Warships could not take on coal or other supplies without the collector's permission, and boarding officers made sure any weapons on merchant steamers were "for defensive purposes only." Customs officers also sealed the hatches; certified the manifests declaring that ships entering the war zone were not carrying contraband; and checked, collected, or canceled the passports of returning U.S. citizens. In short, Customs became the eyes and ears of a country anxious to protect its neutrality.¹

These new duties would have proved impossible without extra personnel. Newly appointed deputy collectors in every port scrambled to find workers for their newly established Neutrality Bureaus.

¹"Report of War Work at the Port of New York by the United States Customs Service, 1914 to 1919," unpublished manuscript in the Archives of the U.S. Customs Service, Washington, D.C., pp. 1-5; *New York Times*, January 5, 1915.

In New York City alone, a core of 30 employees quickly expanded to include 40 inspectors, 10 guards, and 4 clerks who watched the piers, checked the ships, inspected visas, and kept tabs on the export orders of the local manufacturers of steel, boats, and munitions. Bureau employees supervised the loading of the Belgian relief vessels and other ships to make sure that no other nation would sink them on the pretext that there was contraband aboard. The Neutrality Bureau also assumed responsibility for the machinery and munitions purchased by German, Dutch, Russian, Spanish, and Scandinavian firms but impounded by the United States because of the war; nearly \$100 million worth of materiel was warehoused in New York City alone. Customs officers thus not only kept these weapons from belligerent powers but also helped the government stockpile the guns and supplies against the time the United States entered the war.

Beefed-up customs patrols also tracked the movements of warships in U.S. coastal waters. It was not the cruisers that worried them so much as the German submarines, which stealthily destroyed even neutral shipping in the North Atlantic. U-boats were not, in fact, uncommon, nor was their threat imaginary. For instance, at 3 p.m. on Saturday, October 7, 1916, Newport, Rhode Island's Deputy Collector Wolcott notified the Narragansett Naval Station that a German sub had entered Newport Harbor. When the Navy replied that it was U-Boat 53 and it would depart within 24 hours, Wolcott alerted the collector at Providence and the Office of Naval Intelligence in Washington, and then set up a special patrol. He himself went on watch after closing his office and saw the submarine depart at 5:10. The next afternoon he learned that the British freighters *Strathdene*, *West Point*, and *Kingston*; the Dutch freighter *Bloomersdyk*; the Norwegian freighter *Christian Knudsen*; and the British passenger liner *Stephano*—all had been sunk by the U-boat while it cruised just beyond the three-mile limit.²

²Deputy Collector Wolcott to Collector at Providence, October 10, 1916, "Letterpress Books Containing Letters Sent by the Collector, Deputy Collector,

The everyday work of customs officers in the Neutrality Bureau, however, was rarely very exciting or even straightforward. Questions, confusions, and false alarms were far more likely to disrupt a working day than the sight of a German periscope peeking above the whitecaps. How, for example, should customs officials levy duties on goods whose value rose and fell daily with the fortunes of war? Exactly which documents needed the stamps called for by the War Revenue Act of October 22, 1914? If Customs had no authority to prohibit shipments, what could it do about war supplies laden in the United States and sent under a false manifest to a belligerent nation, thereby compromising U.S. neutrality?³

But the most vexing problem of all was how to define contraband, those strategic materials that could not be transported to any warring power without risk of being seized on the high seas. To be sure, military materiel was always contraband, as was gold en route to a nation at war. Household items like soaps and cotton, in contrast, were never considered war goods. But there was a long list of conditional contraband with which to reckon. Food for both man and beast, clothing and boots, money, vehicles and vessels, railroad materials, fuels, horse tack, instruments, explosives, telecommunications equipment, and "balloons and flying machines and their component parts" might be allowable one week and forbidden the next, depending on where they were going and who needed what. The conditional list gave customs officers chronic headaches. Could an exporter send overcoats to Spain? Was that shipment of rubber really going to a Swedish tire factory or to the Kaiser? Should all French or German orders for shoes be sent first to a neutral country and then to the purchaser to avoid seizure? To compli-

and Custodian, Newport, Rhode Island, to Various Sources, May 1881–May 1918," vol. 1916–1918. Bureau of Customs Record, Record Group 36, Federal Records Center, Waltham, Massachusetts; "Report of War Work," p. 10.

³*New York Times*, October 6, 1914; Deputy Collector Wolcott to Collector at Providence, January 15, 1915, "Letterpress Books, vol. 1914–1916," Bureau of Customs Records, RG 36, Federal Records Center, Waltham, Massachusetts; *New York Times*, August 6, 1914.

cate things further, both the Allies and the Central Powers reserved the right to reclassify anything without notice.⁴

The Customs Service got its first sign of relief in January 1915. To protect their ships and goods, all exporters from the United States now had to file affidavits listing the exact contents of each of their shipments and then have them verified by port officials. The Customs Service was in charge of certifying these contraband-free cargoes, first in Savannah and then in other ports. These measures proved of minimal use. Neutral merchantmen still fell victim to U-boat assaults. In February 1916, the government tried another tack; it required exporters to file a special Shipper's Export Declaration in order to send goods to foreign countries or "non-contiguous territories of the United States." ⁵

Continued depredations of North Atlantic shipping, the strains of remaining neutral in a world at war, and mounting internal pressure for military preparedness kept pushing the United States toward the conflict. By March 1917, Germany had sunk five American merchant ships, and Wilson's Cabinet was ready to go to war. So was Congress, and on April 6, 1917—Good Friday—the President signed the document that would send the doughboys "over there."

Customs had already begun preparing itself and its ports for war. New York Collector Dudley Malone acted on his own initiative and closed the port after the Germans announced their renewal of submarine warfare earlier that year. He ordered the patrols assigned to watch the war-bound German and Austrian ships for signs of sabotage, and to watch the crew of those ships as well. In early February 1917, Malone doubled the neutrality guard in his port and instituted strict customs and immigration checks for any crew member seeking to spend a night on the town; soon after, he withdrew all customs inspectors stationed on idled German ships.⁶

⁴*New York Times*, August 1, 1914, p. 3.

⁵*Ibid.*, January 15, 1915; "Report of War Work," p. 5.

⁶Malone was being generous to these crewmen; in Philadelphia and other cities they were confined to their ships. See the *New York Times*, February 1, 5, and 11, 1917.

On April 3, 1917, Secretary of the Treasury McAdoo instructed the collectors that, upon receiving a telegram containing a particular code word, they were to seize all German and Austrian ships in their ports and hold them until further notice. Malone put 500 employees on alert, lined up reinforcements from the Army and Navy and from the Justice and Labor Departments, and began his vigil.

On April 6, as the House of Representatives debated the declaration of war, Malone stayed at his desk. Across the water on Governor's Island, the soldiers of the 22nd U.S. Infantry "slept on their guns awaiting the signal." Six hundred customs men stood silently at the piers, with New York City police and detectives on the streets just beyond. In the dark harbor, destroyers of the Atlantic fleet rode quietly at anchor. And aboard the *Vaterland*, the *Kaiser Wilhelm II*, the *Barbarossa*, and their sister ships, the Germans, too, waited for Congress to stop talking.⁷

McAdoo's coded telegram reached the customhouse at 3:44 a.m. on April 7. By dawn the Customs Service had taken 27 ships, interned 1,100 men on Ellis Island as enemy aliens, and impounded 6,000 pieces of luggage, as well as several pets. "A very stout steward from the *Vaterland* had a big cat in his arms," reported the *New York Times*, "one of his mates led a small fluffy black and white dog on a string, and another man carried a big Congo parrot, gray with a pink tuft."⁸

The same scene was played out at other U.S. ports, with different results. Inspectors found arms aboard ships at Baltimore but hardly anyone or anything at Philadelphia. German crews in New London, Connecticut, disabled their ship rather than have it confiscated, while their counterparts in San Juan harbor opened the seacocks and sank their vessel. Boston may have provided the most drama that night. The purser of the *Amerika*, forced on deck in the predawn drizzle clad only in his

⁷"Report of War Work," p. 21; *New York Times*, April 7, 1917.

⁸*New York Times*, April 7, 1917.

pajamas, threw his hands up and cried to the customs patrol: "Kill me here as well as send me to be killed out there!"⁹

The work did not end when the last German ship had been taken. Customs crews stayed on duty searching for seamen who were ashore that night; inventorying and appraising the valuable paintings, furnishings, fittings, liquor, and ship's stores left aboard; removing all perishable articles for public auction; directing the swarm of engineers, electricians, and shipwrights who almost immediately began to convert the vessels into troop and supply carriers; watching for theft; and forwarding baggage. German translators in the Customs Service even pored over the crews' personal correspondence "to ascertain if it contained matter of interest and importance to the Government."¹⁰

Although the declaration of war increased Customs' cooperation with the Departments of Labor, Commerce, and War, it also multiplied the agency's duties across the board. Officers and inspectors now supervised the war risk insurance programs, for example. But perhaps the most far-reaching change was in export control. Customs already enforced the various export tariff provisions and requirements and kept an eye out for arms and ammunition headed for Mexico, Central America, and Europe. Now, however, Customs had to make sure the food, supplies, and strategic information it sent overseas went to its own troops and not to the enemies'.¹¹

To do this the government legislated what could and could not be shipped abroad and to whom. The Espionage Act of June 15, 1917, gave the President "full power to control all exports." The Bureau of Foreign and Domestic Commerce issued the licenses permitting the export of foodstuffs, arms, fertilizers, and fuels. Customs enforced the law: Title VII, section 3, of that law "authorized and empowered" the collector of customs of any district to refuse clearance and forbid the departure from

⁹Ibid.

¹⁰"Report of War Work," pp. 22-23.

¹¹Ibid., pp. 26-27.

port of any vessel he believed to be "about to carry out of the United States any article or articles in violation of the provisions of this title." The collector could also impose the full penalty for moving such a ship: a \$10,000 fine, two years' imprisonment, or both, plus the forfeiture to the United States of the "vessel, her tackle, apparel, furniture, equipment, and her forbidden cargo." ¹²

Enforcing the law was less simple than it might seem. On top of having to keep track of ever-changing market prices for almost all commodities and having to know which class of merchandise was to be handled by which specialist, customs agents now had to be familiar with the names of nations and seaports around the world, and to know the contents of the shifting contraband and license lists, too. Things did not get any easier once Congress began to refine its new export laws. In September it forbade all wheat shipments to any neutral nation, added both metals and chemicals to the proscribed list, and added a few more countries to the license list. In early October the Trading With the Enemy Act specified still more contraband items, while empowering the government to censor all regular mail and to seize all enemy property. ¹³

The demands of the Espionage and the Trading With the Enemy Acts taxed the Customs Service's organization and manpower in every port. Intensive ship searches and careful scrutiny of passengers and crews drained personnel from other vital customs chores. To keep all operations going smoothly, New York's new collector Byron R. Newton formed a War Port Squadron in December 1917. Led by the chief of the Neutrality Squad, the deputy surveyor who ran the Searching Squad, and a local special Treasury agent, this unit's only responsibility was to

¹² *New York Times*, July 9, 1917; "Report of War Work," p. 27; and William Franklin Willoughby, *Government Organization in Wartime and After* (New York: 1919), p. 121.

¹³ "Report of War Work," p. 32; *New York Times*, September 17 and October 6, 1917; Willoughby, *Government Organization*, pp. 45, 140; and William H. Futrell, *The History of American Customs Jurisprudence* (New York: 1941), p. 58.

carry out the provisions of the new acts, leaving other officers to handle regular customs business. In February 1918, the organization became part of the Customs Intelligence Bureau. Because its 260 members, recruits, or volunteers from other customs offices still could not handle the volume of war work, in April the Treasury Department permitted the hiring of 300 more temporary employees.¹⁴

The Customs Intelligence Bureau did not open new fields of operation but coordinated and extended existing ones; in essence, it replaced the prewar Neutrality Board. It was run like a military unit; its members underwent rigorous training. A senior officer conducted drills on the roof of the New York Customhouse or in a nearby armory, putting the recruits through hours of "setting up exercises, formation and marching by squad and platoon, instruction and exercises in climbing wooden, iron and rope ladders [and] in other tests of agility, such as may be necessary in the work of boarding and searching vessels, and in the use of small arms." The curriculum also called for lectures in "War Geography, Construction of Ships, Searching of Ships, Mustering of Crews, Examination of Baggage, Invisible Writings, Explosives and Bombs, and Prohibited Articles." The result of all this training was a special force in which every member agreed "to conduct himself as a gentleman, to be interested in his duty and faithful in its discharge, and to obey all rules and regulations and orders issued by competent authority." Each member also agreed not to own any vessels, take bribes, "lend money at usurious rates," or gamble, drink, or smoke while on duty.¹⁵

The Bureau's mission was a broad one. Its principal indoor activity was the censorship of nonmail communications. In this it cooperated with the Customs Censorship Bureau, whose translators and inspectors reviewed sketches, notes, phonograph records, photographs, and motion pictures for sensitive infor-

¹⁴"Report of War Work," p. 74.

¹⁵*Ibid.*, pp. 99, 108, 109.

mation and enemy propaganda. Most intelligence work was outdoors, however. The specially uniformed agents boarded and searched vessels, verified their stores, controlled and examined departing passengers and crews to make sure no valuable goods or information left the country, and enforced other U.S. laws along the way.¹⁶

There were specialists in the bureau, of course: The men in passenger control had to be multilingual; the communications crew had to be able to recognize the varieties of secret writing powders that spies favored—and their hiding places for the blank pages. Members of the information unit kept the bureau's databank, recording and indexing reports of violations of the law, checking incoming crew and passenger lists for suspects, and preparing the looseleaf suspect books—alphabetical listings of suspicious people and ships—which they distributed to cutter crews every day. Some intelligence inspectors had to be jewelers, too. In order to protect American reserves, the government allowed no one to take gold or silver coins out of the country. While customs officials and the Federal Reserve Bank willingly exchanged coin for paper, the inspectors began to notice that many of their customers had taken to wearing bracelets, necklaces, and watch chains hung with unmutilated coins. Inspectors soon obtained "suitable instruments" and became skilled at quickly stripping the glittering "charms."¹⁷

During its year of operation in New York, the Customs Intelligence Bureau searched 5,271 ships and mustered 4,799. It uncovered hostile aliens, smuggled jewels, and unpaid income tax. Yet for all its accomplishments, it was not the only office to shoulder extraordinary duties during the war. Appraisers, far from being idled by the wartime drop in trade, opened their laboratories for testing the quality of medical and surgical

¹⁶Ibid., p. 204. For more on passenger control, see "Records Related to Other Departments Within the Collector's Office, 1851-1940, Intelligence Division Reports re: Passengers 1918-1919," RG 36, U.S. Bureau of Customs, Port of San Francisco, Federal Records Center, San Bruno, California.

¹⁷"Report of War Work," pp. 95, 82.

supplies for the Army, Navy, and Red Cross. Although more and more of their colleagues were drafted, other agents kept up with myriad new duties such as issuing the war zone passes that protected the piers from unauthorized visitors, or filing reports for the War Trade Board, the Shipping Board, and the War Risk Insurance Board.¹⁸

They also joined the work of preventing “the importation . . . of any article of an inimical nature” into the country, often heroically. On January 30, 1918, for example, Naval Intelligence warned collector Newton that a shipment of wheat-destroying pollen was steaming for New York aboard the S.S. *Nieuw Amsterdam*. Newton immediately arranged for more than 200 officers to search the 1,500 passengers, their 7,500 pieces of luggage, and the rest of the ship and its cargo (which included among other things 2,000 boxes of flowers and 400 cases of bulbs). For three days agents carefully checked out every bit of paper, clothing, medicine, soap, even toothpaste, looking for the deadly dust. Fortunately, their frantic efforts yielded no “poisonous pollen.”

Other agents literally risked their lives on their jobs. News of a deadly flu virus prompted customs officers to start fumigating ships and passengers arriving from Spain in July 1918. By August, as reports of thousands of deaths across Europe mounted, they physically checked each ship for influenza victims. Many agents ultimately contracted the disease themselves.¹⁹

The signing of the armistice did not lighten Customs’ burden. Large quantities of goods, warehoused during the war, suddenly made their way across the seas again, and stranded tourists scrambled to find their way home. Even the Army added to the Customs workload. During the war the military had handled its own imports and exports without supervision by

¹⁸ *Ibid.*, pp. 71, 90–90.

¹⁹ *Ibid.*, pp. 62, 76; *New York Times*, February 8, July 3, and August 19, 1918.

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Customs agents. Once hostilities ceased, however, Customs resumed control and charged the War Department duty on goods it brought back from active service. The Army protested that it was "embarrassing" that it should have to pay duty to its own government on European-made goods that they had contracted for and used overseas. The Customs Service, looking coolly at the more than \$600 million worth of clothing and supplies the American Expeditionary Force alone had sent home, insisted on the tax: There was so much materiel, they argued, it was very likely that some of it would wind up in surplus stores—in direct competition to U.S.-made goods.²⁰

CUSTOMS IN WORLD WAR II

World War II was essentially a replay of World War I for the Customs Service. The nation again remained neutral as the war began, and again its neutrality was characterized by quirky decisions; in 1939, for instance, President Roosevelt allowed belligerents to purchase U.S. arms on a cash-and-carry basis even as he called for a voluntary "moral embargo" on all airplane parts and raw materials for Japan. Customs again received neutrality enforcement powers and patrolled the harbors and cleared cargoes while taking Red Cross first aid courses and learning the art of self-defense. After Pearl Harbor, the President took control of all exports, and the Treasury Department once again began distributing lists of prohibited and restricted items.²¹

In the ports the collectors reactivated the Communications Control Sections to sift through the films, photographs, records,

²⁰U.S. Congress, House, 68 Cong., 1st Sess., Hearings Before the Committee on Ways and Means re Remission of Customs Duties on Certain War Department Property (Washington, D.C.: 1924), *passim*.

²¹Emily Rosenberg, *Spreading the American Dream* (New York: 1982), p. 186. Customs activities can be followed through the *New York Times*; see September 6, November 7, November 26, December 5, 1939; and May 25, September 28, 1941.

Customs in War and Peace

and magazines that did not arrive in the mail pouches. The Enforcement Division again searched vessels for violations of customs laws and the presence of safety hazards; and the Ships' Statistics Units compiled the daily reports on the movement, size, and tonnage of vessels in the harbor that helped the government track war supplies. They instituted Ships' Stores Control Units to check the rations aboard merchant, troop, and Navy ships, as well as on airplanes. Foreign Funds Control Units regulated foreign cash transactions and foreign-owned property, enforced the limits on the amount of cash passengers could bring into the country, and inspected all gold, diamonds, art, and stamps for their use as "a subterfuge for the transfer of funds" or "a means of message conveyance" by enemy agents. Every hour of every day customs agents went through luggage; checked passports; made sure that no one who was not supposed to boarded or left a quarantined ship; and, as New York Collector Harry M. Durning proudly observed, "maintained a 24-hour vigil in each district headquarters." ²²

CUSTOMS IN THE COLD WAR

During the two world wars, Customs served as a backup to the government's conventional pursuit of victory. In both wars the United States faced known enemies, made and followed battle plans based on historical precedents and contemporary objectives, and equipped its fighting men with recognizable implements of war. The Cold War has not been fought the same way, however. Not only has the distinction between friend and foe been blurred, but so has the definition of weaponry. In this anxious age of belligerent peace, the Customs Service has

²² For a description of war work in New York, see Harry M. Durning, "Directory of War Time Activities Within Collection District No. 10, Port of New York" (July 1, 1943), Archives of the U.S. Customs Service, Washington, D.C. For more general information, see Treasury Department, U.S. Bureau of Customs, *Manual For the Guidance of the Outside Force of the Customs Service* (Washington, D.C.: 1942, 1943), Library of Congress.

accepted some of the responsibility for protecting the nation from the very real threats of nuclear conflict.

One of the most straightforward ways the Service has done this is by enforcing the 1976 Arms Export Control Act. This law gives the President control over imports and exports that may "contribute to an arms race, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements." The proscribed list includes arms, ammunition, implements of war and the technical data and assistance to support them. Authorization derives from legislation dating back to the 1947 National Security Act and includes the 1979 Export Administration Act as well. The government has increasingly relied on Customs to "detect, interdict, and/or investigate . . . illegal international trafficking in [those] arms [and] munitions." ²³

U.S. concern with international arms sales has a long history. An 1825 law allowed the Secretary of War to sell outdated weapons, and by the end of the Civil War both public and private buyers regularly bid on damaged ordnance "otherwise unsuitable" for military service; obviously, the definition of "unsuitable" depended on who needed what when. By 1872, when the nation earned itself more than \$16 million supplying arms to both parties in the Franco-Prussian War, some citizens had begun to realize the diplomatic potential of such sales. They were certainly keenly aware of their economic potential, however, and profit remained the main motive for arms brokering until well into the 20th century. In World War I, after all, U.S. made guns boomed from both sides of no-man's land. Only recently have diplomatic and peacekeeping considerations become a greater priority than bolstering the balance of trade by indiscriminately peddling instruments of death and destruction.²⁴

²³ 22 USCA § 2778, *United States Code Annotated* (St. Paul: 1987); U.S. Customs Service, "Mission and Organization" (Washington, D.C.: c. 1983), Archives of the U.S. Customs Service, Washington, D.C.

²⁴ James Harlan, "Speech Delivered in the Senate of the United States, February 28, 1872, Regarding the Sale of Arms to French Agents, and Alleged Custom-House Frauds," (Washington, D.C., 1872), Library of Congress.

Unfortunately, public policy and private practice do not always coincide, and entrepreneurs have kept the Customs Service very busy indeed. Private arms sales are certainly not forbidden by law. In 1986 the State Department's Office of Munitions Control, which must approve the sale and resale of U.S.-made arms abroad, licensed 4,000 arms dealers who did \$14.9 billion worth of government-approved business. But the office employed only seven people to review that year's 49,000 arms export applications, and only three to monitor the dealers' activities. With such understaffing it is hardly surprising that customs investigators have estimated illegal munitions sales at "many tens of millions of dollars a year, at the very least." Opportunities for private, unlicensed enterprise are boosted by a Defense Department inventory problem. Some Pentagon officials guess that "\$900 million worth of arms, electronic components, spare parts and other military equipment and supplies disappeared in 1986" from U.S. bases and warehouses around the world. A study called Operation Retread, completed that year by Customs and Defense Department personnel, confirmed these "losses" and assessed the dangers in the widespread diversion of those weapons to unfriendly nations.²⁵

Those are the arms deals the Customs Service investigates with a great deal of success. For example, customs agents' work led to the arrest of an owner of Texas Armament Advisors in Brownsville, Texas, who had arranged to sell parts of F-4 fighter and C-130 cargo planes to Iran. Customs agents posing as international arms dealers who could fill even the most sophisticated shopping lists netted a Philadelphia man who was plotting to send navigational beacons for fighter planes to Syria, transport planes to Libya, and computer technology to East Germany. Other customs personnel stopped the smuggling of seven U.S. military helicopters and 4,477 spare parts to Iran, and

²⁵ *New York Times*, April 23, 1986, February 12, 21, 1987; U.S. Customs Service, *Operation Exodus Quarterly Newsletter*, Issue No. 2, Attachment no. 1 (Washington, D.C.: no date), p. 5, Archives of the U.S. Customs Service, Washington, D.C.

rounded up 17 men from six Western nations ("brokers of death who operated a terrorist flea market" was the way Customs Commissioner William von Raab described them) who were selling more than \$2 billion worth of tanks, missiles, and warplanes to the Ayatollah's army.²⁶

Sometimes customs work goes well beyond ordinary police work. In one complicated investigation, Special Agents David A. Wright and Walter Kiniry set up a dummy arms corporation in Buffalo, New York, to attract unlicensed dealers. Within days of their "going into business" the two men were taking orders for millions of dollars' worth of highly sophisticated weapons from eager customers in West Germany, Austria, and Switzerland. That not all of the merchandise was legally available did not bother either the brokers or the buyers, and soon shoppers were flying to Buffalo to see the newest NATO rifles, M-60 machine guns, and TOW missiles before negotiating a price.

The first fly to be caught in Customs' web was Stephen Reiter, the son of a West German family of arms dealers. When he arrived to pay \$2.3 million for the 4,000 M-16's he had ordered, federal officials arrested him. In return for leniency, Reiter agreed to find more clients for the customs sting. He recruited Heinz Golitschek, a failed clothing manufacturer from Vienna who hoped to recoup his fortune by providing 10 Huey Cobra AH-1 helicopters for Iran. Golitschek, too, found only handcuffs waiting for him in Buffalo.²⁷

Wright and Kiniry kept their Esak Enterprises going even after Golitschek's arrest in order to interdict more of the hardware that crosses and recrosses international borders under forged licenses and end-user certificates. They and others like them have made steady advances against the illegal arms trade, and have recovered millions of dollars' worth of guns, lasers, and

²⁶For further details about these cases, see *New York Times*, January 4, 1987; *Washington Post*, November 27, 1986; *Washington Times*, April 23, May 23, and November 27, 1986.

²⁷*Buffalo News*, February 16 and March 4, 1986; *Wall Street Journal*, September 5, 1986.

airplane parts while working under an umbrella enforcement program code named Operation Exodus. Begun in October 1981 in response to a Reagan administration push to stop the transfer of strategic U.S. technology to Eastern bloc nations, Exodus concerns itself with both the hardware and the software of weapons systems. Relying on cargo inspections, special investigations, and overseas support, Exodus operatives also look out for goods or services that may not appear on the Munitions List but nevertheless can be considered "militarily critical."²⁸

To help identify these items, Customs relies on the decisions of the Department of Commerce, which licenses technological exports, and the Department of Defense, which reviews the Commerce Department rulings. Defense personnel use more than the Commodity Control List and the Munitions List to guide their deliberations. They also consider the complexity of an item's design and production; determine whether it uses keystone manufacturing, inspection, or test equipment; check whether it requires sophisticated operation, application, or maintenance support; and question whether its export would "reveal or give insight into the design and manufacture of a U.S. military system." The political sympathies and nuclear capabilities of the target nation also color the Pentagon's decisions.²⁹

This second level of review, although arguably essential for national security, does not make it any easier for Customs to know what it can and cannot allow out of the country. Neither does the widespread confusion over what really constitutes critical technology. The Commerce and Defense Department criteria are fairly simple to apply to gun sights and detonators, but harder to interpret for "dual-use items" like computers and scientific papers, which have both civilian and military applica-

²⁸The U.S. Customs Service has a variety of brochures, fact sheets, posters, advisories, and reports explaining and summarizing the activities of Operation Exodus, all of which are available from the Exodus Command Center in the Service's Washington, D.C., headquarters.

²⁹*Wall Street Journal*, January 21, 1987, *Washington Post*, February 5, 1987; 50 USC § 2404, *United States Code Annotated*, (St. Paul: 1987), vol. 50, Cumulative Pocket, p. 343.

tions. The current definition of critical technology is open-ended and slippery:

the classified and unclassified nuclear and non-nuclear unpublished technical data, whose acquisition by a potential adversary could make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country, irrespective of whether such technology is acquired directly from the United States or indirectly through another recipient, or whether its declared end-use by the recipient is a military or non-military use.

This "anything is possible" standard put Texas Instruments' "Speak & Spell," which is readily available in toy stores from coast to coast, on the controlled list, because it contained an embedded microprocessor that might drive military defense systems when it was not coaching children in spelling.³⁰

Without constant, clear guidance as to what really constitutes a critical export, the Customs Service sometimes finds itself in an ambiguous environment. Such responsibility sits well with Commissioner von Raab, who during his tenure has transformed Exodus from a reactive to a proactive program. Whereas before "the U.S. acted only in those cases that literally sprang up and hit us in the face [and] we responded only when somebody jumped out of the bushes and yelled: 'Here I am, ha ha, arrest me,' " explained von Raab in 1985, "today, we're out looking for the problem." To do so he has assigned more agents to Exodus and commissioned them to carry on domestic investigations, to "penetrate dummy corporations and thwart their operators," and to develop a useful profile of those dealers and brokers supplying the Soviet Union with American equipment and expertise.³¹

³⁰Steven D. Overly, "Regulation of Critical Technologies Under the Export Administration Act of 1979 and the Proposed Export Administration Amendments of 1983: American Business Versus National Security," *North Carolina Journal of International Law and Commercial Regulations*, vol. 10 (1984), p. 423, n. 2; *Time*, June 17, 1985, p. 28.

³¹*U.S. News & World Report*, August 12, 1985, p. 39.

Much of Customs' work in this area is far from glamorous. Exodus teams check for export licenses and seize the shipments lacking the necessary permits, thereby netting the government everything from oil-field drilling equipment to hard-disk drives. They are nothing if not conscientious, preferring to be safe than sorry: In July 1982, agents interdicted \$400,000 worth of U.S.-made computers in West Germany, insisting that they were strategically important machines en route to the Soviet Union, even though the exporter explained that the computers were several years old and "as significant strategically as . . . a Dodge Dart." ³²

Other cases do require Exodus agents to play James Bond. The April 1987 indictment of three men who conspired to sell more than \$1 million worth of computers, chips, and interface systems for the Soviet IBM-clone Ryad computers was the result of months of undercover and surveillance work in the United States and Panama. Other operatives cracked a smuggling ring that was buying the latest electronic gear from firms like Hughes Aircraft and diverting it through Switzerland to Bulgaria or through Hong Kong to China. Exodus also relies on customs attachés abroad both to supply information about smugglers and to secure the cooperation of their host governments; in November 1983, Swedish customs honored a U.S. request to stop three containers of U.S.-made computer parts from leaving the free port of Helsingborg for the Soviet Union.³³

Exodus prides itself on having cornered some of the world's greatest "techno-bandits," although catching them has often proved impossible. For example, in 1983 the Los Angeles customs office began investigating defense contractor Richard

³²Regional Commissioner, Chicago, Weekly Management Brief MAN-1-02-EMS-KP, May 1, 1986, p. 2, Archives of the U.S. Customs Service, Washington, D.C.; Regional Commissioner, Northeast, *Weekly Management Brief* MAN-1-0:1C, November 6, 1986, p. 2, Archives of the U.S. Customs Service, Washington, D.C.; *New York Times*, July 15, 1982.

³³*Los Angeles Times*, April 4, 1987; *Journal of Commerce*, April 7, 1987; *New York Times*, February 3, 1987; *Wall Street Journal*, November 11, 1986, and January 15, 1987.

Smyth. Smyth's offices had been robbed of several thousand dollars' worth of computer hardware and software, and Smyth, fearing that some classified government documents had also been taken, dutifully reported the theft to the FBI. The Customs Service came along with its own search warrant and began digging. After two years, agents had proof that Smyth and an accomplice had obtained more than 800 krytons (electronic timing devices that can trigger almost anything from strobe lights to nuclear devices) and smuggled them to Israel. Indicted in May 1985, Smyth jumped bail three months later. Although the Customs Service has since recovered more than half the krytons, Smyth remains a fugitive.³⁴

One who did not get away, however, was Werner Bruchhausen, a West German electronics engineer who, between 1975 and 1985, sold more than \$10 million worth of U.S. high technology to the Soviet Union. From his mansion outside Munich, Bruchhausen directed the dummy corporations that bought, sold and shipped the equipment, some of which was so secret that U.S. allies still knew nothing about it. Bruchhausen's employees provided the Soviets with an entire factory to improve their computer microchip production and with U.S. military communications equipment to help them monitor the movements of NATO forces. Although he had been indicted for these activities in August 1981, Bruchhausen was not arrested until he tried to enter Britain with a false passport in May 1985. Charged with a long list of offenses by the U.S. government while still in Bow Street prison, he was extradited to the States in June 1986, where he was convicted of 15 counts of wire fraud the following February. Although Bruchhausen continued to direct his network from his jail cell, the Customs Service rejoiced in the capture "of one of the most important members of a small

³⁴ "Customs Counts Export Control Successes," Department of the Treasury News, December 31, 1985, Archives of the U.S. Customs Service, Washington, D.C.; *Washington Post*, October 31, 1986; U.S. Customs Service, Operation Exodus, Summary of Significant Export Cases (no date), Archives of the U.S. Customs Service, Washington, D.C.

fraternity of shady characters who handle most of the transfers of forbidden technology to the Soviet Bloc.” Commissioner von Raab pointed out the true significance of the arrest in a letter urging a stiff prison term for the culprit: Bruchhausen’s imprisonment did not close a damaging technological break as much as it showed “the world that the United States will not passively accept such violations and that no entrepreneur is untouchable.” ³⁵

AN EVER-WIDENING MISSION

If the Customs Service has been part of the nation’s war efforts throughout the 20th century, it has also been an instrument of foreign policy. Even before the end of World War I, Washington strategists had realized the wider applications and effects of the trade laws the Customs Service enforces. Secretary of Commerce William Redfield informed his audience at a New York City Automobile Club luncheon in October 1917 that “the peaceful power of commerce is one of the United States’ most powerful weapons against Germany. . . . We must not depend on our army alone,” he warned., “to prevent our enemies from having access to our resources.” The next year the *New York Times* proclaimed that “Treaties And Tariffs Will Be the New Weapons,” explaining to its readers that trade wars and Government policy would help U.S. business gain economic supremacy of the postwar world.³⁶

The political benefits of these weapons were also grasped. President Roosevelt used the Trade Agreement Act of 1934 to reduce the duties on Cuban sugar, less to aid the island’s

³⁵ The Bruchhausen case was extensively covered in the press. See, for example, *USA Today*, May 10, 1985; *New York Times*, May 10, 1985; *Washington Post*, June 14, 1986, January 28, 1987; and *Los Angeles Times*, January 28, February 21, and April 3, 1987. See also the Press Packet for May 9, 1985, prepared by the Customs Service, located in its archives in Washington, D.C.

³⁶ *New York Times*, October 17, 1917, and September 29, 1918.

economy than to encourage the establishment of a government more sympathetic to U.S. interests there. This assumption that our economic clout can force concessions from foreign powers persists today. Customs currently enforces sanctions against several nations for many reasons, among them "crime control, human rights, and anti-terrorism." The Customs Service makes sure that only authorized goods go to North Korea, Vietnam, Kampuchea, Cuba, Libya, or Iran, and that only certain items go to or come from the Soviet Union.³⁷

These trade restrictions are perhaps more symbolic than useful; some government officials have conceded that they are not always worth their cost. Prohibiting the export of oil and gas equipment to the Soviets to protest the invasion of Afghanistan hurt Houston more than it did Moscow; seizing imports of Soviet-produced chess sets, television cabinets, and tea did not free any dissidents from the gulags; and putting an embargo on certain South African minerals—and then, realizing that they were essential to "strategic American security interest," suddenly lifting that ban—did not create racial harmony in Johannesburg.³⁸

Nor are the sanctions universally welcomed. The Customs Service has found itself "the catcher in a javelin contest . . . [getting] it from every angle." Scientists, scholars, and engineers complain that the export rules for critical technology "impede the development of [that] technology" along with impeding its flow. The government's approach, they argue, is tantamount to "shooting ourselves in the foot," because it also prevents Warsaw Pact nations from sharing their discoveries with the United States. Business people cry that the government is restricting free

³⁷ Rosenberg, *Spreading the American Dream*, pp. 179–81; Benjamin H. Flowe, Jr., "Export Licensing of Computer Equipment and Technology—A Practitioner's Perspective," *North Carolina Journal of International Law and Commercial Regulations*, vol. 10 (1985), pp. 640–41.

³⁸ Kenneth W. Abbott, "Linking Trade to Political Goals: Foreign Policy Export Controls in the 1970s and 1980s," *Minnesota Law Review*, vol. 65, no. 5 (June 1981), p. 797; *Newsweek*, January 26, 1987, p. 38; *New York Times*, March 19, 1984; and *Washington Times*, January 20, 1987.

trade and that closing off markets means fewer sales and fewer jobs, and ultimately the loss of the country's economic vitality. At the same time some people insist that the government is not being strong enough.³⁹

Despite the complaints, enforcing these sanctions to implement foreign policy has become another facet of Customs' mission. Although it might seem that this has moved the Customs Service away from the Treasury Department and closer to the Department of State, these defensive responsibilities are really part of the agency's long-standing commitment to guard more than the revenue. Arms and technology are the focus of national fears in this last quarter of the 20th century, just as new immigrant stock, alcoholic beverages, narcotic drugs, and immoral literature frightened earlier generations. As it has before, Customs is using its broad powers to continue to protect the nation and its citizens.

³⁹Gary Waugh, interview with author, U.S. Customs Service, Washington, D.C., July 16, 1987; *Wall Street Journal*, May 10, 1985, and February 5, 1987; *Washington Times*, January 15, 1987.

EPILOGUE

By Stuart P. Seidel

When I began my Customs career in New York City in 1969, Customs was operating in much the same way as it had during the preceding 180 years.

Although there were no longer any Presidentially appointed collectors or appraisers (those offices were abolished in 1965), several persons who had held those positions were still employed by Customs as regional commissioners or district directors. The Customs Service had only 9,500 employees, not many more than the 8,800 or so it had in the 1880's despite a growth in trade and commerce. Vessels were still boarded in mid-stream and inspectors still kept lookout lists on slips of paper tucked in their caps. Customs officers dutifully checked invoices and bills of lading against the manifests. Customs (special) agents were members of the Customs Agency Service, an organization merged with the Division of Customs in 1927 to form the Bureau of Customs, but which still had an independent field organization under an Assistant Commissioner for Investigations.

But things were beginning to change. Customs was experimenting with a computerized lookout system at border points and Congress had appropriated funds for an air wing. (Ironically, Customs had had one of the first government air units in the 1930's, but it had been disbanded.) A study was being conducted to determine if computerization of Customs commercial activities were possible. The stage was set. In the next 20 years, Customs would undergo a major transformation. It would expand, not only in resources, but also in responsibilities and new programs.

Customs ranks increased in the early 1970's with the addition of approximately 1,200 "air security officers," or sky marshals as they were more commonly called, to handle the rash of aircraft hijackings to Cuba. These officers inspected outbound baggage, and flew undercover on most foreign flights between 1971 and 1974. The expertise developed by Customs in the outbound baggage examinations came in handy when the outbound currency and export programs were activated in the mid-1970's and early 1980's respectively. But Customs officers were not satisfied with looking for and seizing illegal exports or undeclared funds. The seizures or discoveries were followed by lengthy investigations in the United States and abroad, to determine the source and routing of the funds or the real destination of the illegal export. These overseas investigations were frequently aided by Customs many mutual assistance agreements and the cooperation of Customs' foreign counterparts.

High-speed air transportation and other modern advances have expanded trade and lowered international barriers. This has led to an increase in cooperation between customs agencies around the world in both enforcement and commercial operations. The U.S. Customs Service has entered into Customs Mutual Assistance Agreements with a number of countries and the United States is a signatory to several multilateral conventions sponsored by the international Customs Cooperation Council. As a result, American Customs officers frequently work with their foreign counterparts in money laundering investigations, export cases, value inquiries, drug detection, and the recovery of stolen art and artifacts. Preclearance inspectors in Canada, Bermuda and the Bahamas work closely with their foreign associates and frequently testify in foreign courts. The United States and Canada have opened a joint border station and others are planned. Members of the Royal Bahamas Defence Force accompany U.S. Customs officers on vessels and aircraft operating in the U.S.-Bahamas corridor. The United States Customs Service has trained over 10,012 officers from 114 different countries.

Epilogue

No study of the United States Customs Service would be complete without at least a brief discussion of where the Customs Service is going. Chapter XI discusses Customs' efforts to stem the illegal flow of high technology out of the country. Customs must not only prevent other countries from illegally obtaining high technology, it must learn to use high technology itself. Smugglers in this day and age are no longer satisfied with simply concealing contraband in commercial shipments, they are using the structural frames of the containers and sophisticated hidden compartments built into vessels and aircraft. Smugglers now use high-speed jets and ocean racers. Legitimate importers can no longer wait months for their shipments; they need their inventories immediately.

The United States Customs Service has become a leader in the use of high technology in both its enforcement and commercial endeavors. It developed a computer network for ports of entry in 1969 known as CADPIN (Customs Automated Data Processing Intelligence Network), which freed the Customs officer, at last, from putting paper lookout lists in his cap. It linked the ports of entry with lookout lists, criminal history information and warrants and led to the development of the TECS (Treasury Enforcement Communications System) network which is used not only by the U.S. Customs Service, but also by the other Treasury law enforcement agencies. In the 1980's, TECS evolved into an integrated enforcement network that served as a source of information, generated reports, interfaced with the Automated Commercial System (ACS), and tied into computer networks operated by the Drug Enforcement Administration, Federal Bureau of Investigation, and the Federal Aviation Administration, to name a few.

Customs air interdiction program, which was resurrected in 1968, now has nearly 100 aircraft and uses state-of-the-art radar technology and infra-red imagery to meet its specialized needs. The aircraft range from fixed-wing propeller-driven craft to jets and Blackhawk helicopters. Recent additions include sophisticated radar planes. Aerostats developed by the military (sta-

tionary radar balloons tethered to the ground with 10,000 feet of cabling) feed information into Command, Control, Communications, and Intelligence centers (C³I). Similar operations and equipment are used in the Blue Lightning Operations Centers (BLOC) for vessel detection. The BLOC in Richmond Heights, near Miami, for example, receives radar images of vessel traffic from the Bahamas and Florida coasts and can relay computer-generated information to any of the local, state, or federal members of the Blue Lightning Strike Force via the sophisticated Customs Over the Horizon Radio Network (COTHEN).

Customs R&D teams and contractors have also been developing license plate readers for remote unmanned border crossing areas and a variety of high-tech instruments which would detect drugs in cargo, baggage, and container frames.

After 200 years of processing paper import documents, Customs realized that it would not be able to keep up with the expansion of worldwide trade unless the agency automated its commercial operations. Unfortunately, the job was complicated by several factors: Some members of the trade community had already begun to automate their operations, but not all aspects of the trade community were using similar or compatible computer languages. The laws Customs operated under were written in a paper era when all merchandise was looked at and different countries had different definitions and requirements. Customs began to computerize its commercial operations a piece at a time. After testing, the piece or "module" was integrated with the other "modules" and eventually ACS was created. At the same time, Customs worked with the trade community, its foreign counterparts, and the United Nations to support a common international computer "language" in which different systems, anywhere in the world, could communicate with each other. The result was EDIFACT, the Electronic Data Interface for Administration, Commerce, and Transportation.

With EDIFACT, a U.S. company can electronically order products from a German company. The same electronics prepare an invoice and perhaps a bill of lading, which is then electron-

ically transmitted to the carrier who adds information to create an electronic manifest. The invoice and entry information is transmitted to the broker or importer who electronically files it with Customs. ACS matches the information with the automated manifest and bill of lading information which it received from the carrier to ensure the accuracy of the shipping information, the classification (against its built-in Harmonized System Tariff Schedule data base), the bond and surety information against its bond and surety files), and decides whether to inspect the shipment or release it. Selectivity data has already been matched against other shipments and enforcement information, supplied by Customs or any of the nearly 100 other agencies for which it enforces laws. The ACS system has truly revolutionized the way Customs and the import community do business.

Customs legal operations will not be left behind. The Office of Regulations and Rulings has begun to automate its rulings for ease of retrievability by import specialists, customhouse brokers, and government and private attorneys, and the system will be integrated into ACS. Both the Offices of Regulations and Rulings and Chief Counsel have full access to commercial automated legal research tools. Attorneys at headquarters and in the field can communicate electronically with each other and legal documents which formerly took weeks to prepare and mail can be drafted and transmitted electronically in hours or even minutes. The yellow legal pad, while still visible on attorneys' desks is giving way to the computer terminals which are now essential tools of every Customs attorney.

The 15,000 Customs officers still bring in \$18 for every dollar spent. User fees pay for many Customs' commercial activities, while forfeited currency and property pay for some of the agency's enforcement activities. The Customs Service is probably the most cost-effective agency in the U.S. government.

Appendix I

COMMISSIONERS OF CUSTOMS

Although the Customs Service was created on July 31, 1789, by an Act of Congress, it was not until 1849 that President Zachary Taylor created the office of "Commissioner of Customs." From 1849 until 1894, the Commissioner acted as an auditor of Customs officials' accounts. At no time during this period did his activities include overall administration of the Customs Service or of its officers.

Then in 1875 the Congress gave Customs some degree of independence from the Secretary of the Treasury by creating a "Division of Customs," headed by a "Chief," whose office ran parallel with that of the Commissioner. In 1923 the Division Chief's title was changed to "Director." This, in turn, was abolished on March 3, 1927 and the modern era of the Office of the Commissioner of Customs was ushered in.

THE EARLY YEARS (1849-1894)

Commissioners of Customs

Charles William Rockwell
(1849-1852)
Hugh Johnston Anderson
(1853-1857)
Samuel Ingham (1857-1861)
Nathan Sargent (1861-1871)
William T. Haines (1871-1873)
Henry Clay Johnson (1874-1884)
John Swayze McCalmont
(1885-1889)
Samuel V. Holliday (1889-1893)
William Henry Pugh (1893-1894)

CHIEFS

DIVISION OF CUSTOMS

Office created March 3, 1875

Abolished March 3, 1927

Henry B. James (1871-1875)
W. F. Clarke (1875-1879)
Henry B. James (1879-1885)
James G. Macgregor (1885-1893)
John M. Comstock (1893-1899)
Andrew Johnson (1899-1903)
John R. Garrison (1903-1905)

James L. Gerry (1905-1909)
Charles P. Montgomery
(1909-1911)
Frank M. Halstead (1911-1919)
George W. Ashworth (1919-1922)
Ernest W. Camp (1922-1923)
Ernest W. Camp, Director
(1923-1927)

THE MODERN ERA (1927-)

Commissioners of Customs

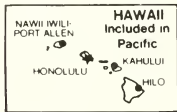
Ernest W. Camp (1927-1929)
Francis Xavier A. Eble
(1929-1933)
James Henry Moyle (1933-1939)
Basil Harris (1939-1940)
William Roy Johnson (1940-1947)
Frank Dow (1949-1953)
(Acting, 1947-1949)
Ralph Kelly (1954-1961)
Philip Nichols, Jr. (1961-1964)
Lester D. Johnson (1965-1969)
Myles Joseph Ambrose
(1969-1972)
Vernon Darrell Acree (1972-1977)
Robert E. Chasen (1977-1980)
William von Raab (1981-)

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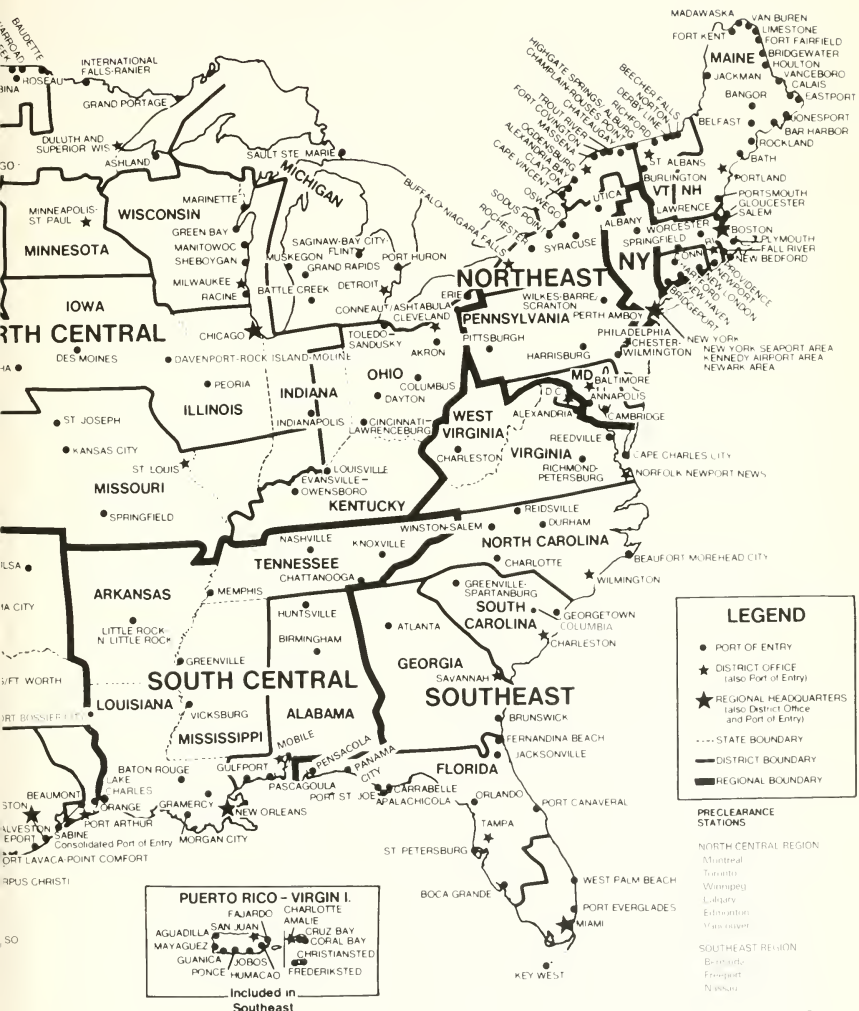
PORTS OF ENTRY

Administratively, the U.S. Customs Service is divided into seven regions, supervising 45 districts that in turn oversee some 300 ports of entry. U.S. Customs also has preclearance facilities in the Bahamas, Bermuda, and Canada.

Overseas, U.S. Customs maintains offices in U.S. embassies or consulates in Bangkok, Bonn, Dublin, Hermosillo, Hong Kong, London, Mexico City, Milan, Monterrey, Ottawa, Panama City, Paris, Rome, Tokyo, Seoul, Singapore, Vienna, and The Hague. An attaché represents U.S. Customs in the U.S. Mission to the European Communities in Brussels.



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